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## ARTICLES

### CULTURE, CHAOS AND CAPITALISM: PRIVATIZATION IN KAZAKHSTAN

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Those countries arising out of the remnants of the Soviet Union immediately confronted a number of serious political and economic problems. Each had to wrestle with issues of

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sovereignty and democracy and, in some cases, civil war.<sup>1</sup> In the economic realm, they had to address the problems of dismantling the command economy. Independence left these states owning the pieces of the centralized economy that happened to be in their territory when the Soviet Union collapsed. The result was more chaos than cohesion.

Most of the newly independent states tried, with varying degrees of seriousness, to abandon the Soviet style of economic management in favor of a more open market-driven approach.<sup>2</sup> As part of the process, these countries privatized industries, shifting ownership from public to private.<sup>3</sup> The programs typically involved a mix of cash sales and outright transfers, usually in return for coupons or vouchers.

The widespread nature of privatization efforts in the former Soviet Union has become a common enough topic in legal literature, although critical analysis of the success or failure of these efforts remains woefully underdeveloped.<sup>4</sup> To the extent assessment has occurred, it has usually centered around the speed with which the government has placed state assets into the hands

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<sup>1</sup> Georgia, Moldova and Tajikistan had to address civil wars almost immediately after independence. For a discussion of the civil war in Tajikistan, see Muriel Atkin, *Tajikistan's Civil War*, CURRENT HIST., Oct. 1997, at 336.

<sup>2</sup> This approach was not universally accepted. Belarus represented perhaps the most notable exception, having made little progress toward developing a market economy by 1998.

<sup>3</sup> In general, most of the newly independent states tried, to some degree, to give at least some of the industrial base to its citizens. This usually meant distributing vouchers or coupons to a subsection of the people living in the country and giving them the right to use the securities to acquire interests in privatizing companies. Common issues included whether to make the securities transferable bearer instruments (yes in Russia; no in Ukraine and Kazakhstan) and whether individuals could participate directly in auctions (as in Russia) or had to go through intermediaries, such as investment funds (as in Kazakhstan).

<sup>4</sup> See, e.g., Kent F. Moors, *The Failure of Russian Privatization 1992-1994: How the Industrial Nomenklatura Prevented Genuine Reform*, 3 J. INT'L LEGAL STUD. 1, 51 (1997) (concluding that "if privatization was seen as an attempt to break the traditional hold on industrial power, it failed"). Much of the literature has been critical of the privatization process, particularly in Russia. The criticisms have focused on the lack of transparency and the prevalence of inside deals. See, e.g., Ira W. Lieberman & Rogi Veimetra, *The Rush for State Shares in the "Klondyke" of Wild East Capitalism: Loans-for-Shares Transactions in Russia*, 29 GEO. WASH. J. INT'L L. & ECON. 737, 760 (1996) (describing loans for shares privatization as a "lose-lose proposition for all of the stakeholders in Russia").

of private owners.<sup>5</sup>

Often missed are the pronounced differences among the various parts of the former Soviet Union and the need to consider the cultural affects of a new economic order.<sup>6</sup> Open markets and capitalism contained values inimical to some cultures in the former Soviet Union. Moreover, they had to address the consequences of installing an open market economy at the very time they were trying to construct a nation state. This was particularly true in connection with Kazakhstan.<sup>7</sup>

As nomadic people, Kazakhs dominated the open and sparsely populated steppes in Central Asia. Typical of nomadic cultures, Kazakhs had no tradition of land ownership. Instead, most economic activity centered on animal husbandry and annual migration. Nor was Kazakh culture particularly rapacious. Aside from herds, personal property was largely limited to what could be carried.

The absorption of Kazakhstan into the Russian empire in the sixteenth and seventeenth century resulted in increased pressure on the migratory lifestyle. Policies emanating from St. Petersburg sought to encourage the settlement of Kazakhs.<sup>8</sup> Nonetheless, many refused. On the eve of the 1917 revolution,

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<sup>5</sup> A number of benchmarks could be used to assess the success or failure of privatization efforts. The speed of the transfer, recovery of the economy, and widespread participation of the population in the process, all could be used to assess the progress of privatization. In some respects, these all represent variations on the same theme. Widespread participation and speed of transfers arguably are important because they can facilitate the country's economic recovery.

<sup>6</sup> If the goal is rapid privatization, certain policy implications follow. The program would need to minimize the inevitable opposition that would arise, particularly from the government or from enterprises. See, e.g., ANDERS ASLUND, *HOW RUSSIA BECAME A MARKET ECONOMY* 230 (1995) (arguing for an option to provide employees and managers with 51% of designed shares to turn workers into "advocates for privatization"); Merton J. Peck, *Russian Privatization: What Basis Does It Provide for a Market Economy?*, 5 *TRANSNAT'L L. & CONTEMP. PROBS.* 21, 36 (1995) (discussing an option to provide management and employees with 51% of shares added to gain approval by the Duma Economic Policy Committee).

<sup>7</sup> Central Asia encompasses the five stans (the Turkic word for land): Kazakhstan, Uzbekistan, Turkmenistan, Tajikistan and Kyrgyzstan. Under the Soviet system, Kazakhstan was not considered part of Central Asia. This concept was a holdover from the distinction between nomadic and sedentary people.

<sup>8</sup> See P.A. MICHAELS, *RED SANDS: COLLECTIVIZATION IN KAZAKHSTAN*, 11 (1991).

Kazakhstan could still be described as nomadic.

It was Stalin who permanently ended the migratory lifestyle. In the late 1920s, he instituted a process of mandatory collectivization, including the seizure of herds.<sup>9</sup> Rather than accede to the new system, Kazakhs slaughtered their animals, resulting in mass starvation. The tragedy of collectivization, and the large scale Russian migration into the region, resulted in Kazakhs becoming a minority in their own country. Local traditions were subjugated to the dominant Russian culture; Russian replaced Kazakh as the *lingua franca* throughout the steppe.

In many respects, the fall of the Soviet Union and independence represented a repeat of collectivization: a rapid and traumatic shift in the prevailing economic system with little preparation. The demise of the command economy and the introduction of capitalistic principals created a jarring experience. Not versed in mercantile behavior, either as nomads or as citizens of the Soviet Union, Kazakhs had little experience with the rigors of a capitalist economy. Having learned to accept government edicts to resolve economic matters, Kazakhs had little awareness of, or sympathy with, the guiding hand of Adam Smith.

Capitalism also descended during a period when Kazakhstan confronted the task of nation building. As the only part of the Soviet Union where the indigenous people constituted a minority of the population upon independence, Kazakhs confronted a language in decline, a culture not taught in schools, and a polyglot population. Thinly populated, mineral rich, and coveted by neighboring empires, the continued viability of Kazakhstan and the Kazakh people remained unclear.

These factors provide a far richer context for examining the success or failure of privatization in Kazakhstan. Rather than emphasizing raw statistics, such as the percentage of assets transferred to private hands, privatization can be judged by its contribution to Kazakh culture and the degree to which the process facilitated the transition to an unfamiliar economic system. By these standards, Kazakhstan's efforts to date have fallen short of expectations.

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<sup>9</sup> See *id.* at 54.

## 1. BACKGROUND

Understanding Kazakhstan foremost requires familiarity with a number of unique defining and interrelated characteristics. They range from the geography of the steppe, the relative youth of the Kazakh people, the nomadic past, to the fragile nature of the resulting culture.

Located in Central Asia, the territory of Kazakhstan had been inhabited largely by nomadic peoples for 2,500 years.<sup>10</sup> The explanation was, in large part, geographic. Containing vast open spaces, Kazakhstan consisted mostly of steppe and desert/semi-desert, with mountains dominating the south. The result was an open, sparsely populated territory highly receptive to cultures which ranged over large areas, primarily in search of grazing land.

Great nations formed and perished on the Central Asian steppes, with various marauders periodically overrunning the area.<sup>11</sup> Kazakhs, as an identifiable group, however, represented a relatively recent addition. Emerging only in the fifteenth century, the Kazakh nation was initially more of a political rather than an ethnic classification.<sup>12</sup>

With the disintegration of the Golden Horde, Mongolian conquerors, who had their roots in the armies of Ghengis Khan, reasserted their authority. In particular, the Uzbek Khanate came to dominate portions of Central Asia.<sup>13</sup> Two sons of a former Uzbek Khan broke away and laid claim to territory in what is now southern Kazakhstan. The rulers of the territory and the tribes pledging allegiance were labeled Kazakhs.<sup>14</sup> Ethnically and

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<sup>10</sup> See THOMAS J. BARFIELD, *THE PERILOUS FRONTIER: NOMADIC EMPIRES AND CHINA* 1 (1989).

<sup>11</sup> A polyglot region, Central Asia had been conquered by Greeks, Turks, Arabs and Mongols, to name a few. Illustrious conquerors included Alexander the Great, Ghengis Khan and Tamerlane.

<sup>12</sup> While not entirely certain, the word Kazakh apparently came from old Turkic, and meant "free, independent nomad." *Kazakhstan: The Challenge of Transition, Human Development Report 1995*, ch. 1 (visited Oct. 30, 1998) <<http://www.nywork4.undp.org/undp/rbec/nhdr/kazakhtan.htm>> [hereinafter *Kazakhstan: Human Development Report*]; see also CENTRAL ASIA READER 32 (H. B. Paksoy ed., 1994) (noting that according to Zeki Togan, the term described those without a family or tribe).

<sup>13</sup> See MARTHA BRILL OLCOTT, *THE KAZAKHS* 3-4 (2d ed. 1995).

<sup>14</sup> See *id.* At least one author places the date of the Kazakh Khanate at 1459. See Jiger Janabel, *The Golden Horde and the Formation of the Ethnic Kazakhs* (visited Oct. 30, 1998) <<http://www.csen.org/janabel.htm>>.

culturally, however, they were little different from their Uzbek neighbors to the south.

By the early sixteenth century, however, a distinct Kazakh people had emerged. Their relative youth notwithstanding, Kazakhs had a much greater sense of collective identity than most other people in Central Asia. Kazakhs spoke a Turkic language and adhered to a common religion.<sup>15</sup> They consisted of three major subgroups. Labeled hordes in English and Zhus in Kazakh,<sup>16</sup> they included the Great, Middle and Small.<sup>17</sup> Each nominally headed by a khan, the Zhus were concentrated in particular geographic regions: the Small was in the west near the Caspian Sea, the Middle was in the central and northern Kazakhstan, and the Great was in the south.<sup>18</sup>

Unlike the more settled "oasis" people, Kazakhs relied on animal husbandry rather than crop cultivation as their primary economic activity.<sup>19</sup> They lived a migratory existence, ranging over large swathes of territory in search of adequate grazing lands.<sup>20</sup> "[U]nfettered by belongings," Kazakhs were "organized by uninterrupted movement."<sup>21</sup> A culture not based on stone and

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<sup>15</sup> In the region, Uzbeks, Turkmen, Kyrgyz and Kazakhs all speak Turkic languages. The only significant exception in Central Asia are the Tajiks, who speak a Farsi-based language. See *infra* note 117.

<sup>16</sup> "Horde" represents a very imprecise translation. Zhus in Kazakh meant 100 or a large number. See GEOFFREY WHEELER, *THE MODERN HISTORY OF SOVIET CENTRAL ASIA* 31 (1964).

<sup>17</sup> The Great is also sometimes referred to as the Eldest. In addition, Kazakhs recognize two groups not affiliated with any particular Zhus: the Tore, the descendants of the army of Ghengis Khan, and the Khoja, the descendants of Muslim religious leaders who purportedly trace their lineage to Mohammed. Interview on file with author (May 1997).

<sup>18</sup> The precise origination of the three Zhus is not certain. Some believe that they were subdivisions based upon the principal grazing lands used by each group. See GEORGE J. DEMKO, *THE RUSSIAN COLONIZATION OF KAZAKHSTAN: 1896-1916* 25 (1969). What is clear is that Kazakhs today still have a strong identification with their respective Zhus, and often, when they meet, begin by asking what Zhus they are from.

<sup>19</sup> Kazakhs traveled in *auls*, which were usually clusters of two to four households. See A.M. KHAZANOV, *NOMADS AND THE OUTSIDE WORLD* 132, 134 (Julia Crookenden, trans., 1994) (calling nomadic units "weak and decentralized"). Combining households and herds meant that nomads could share tasks and more efficiently supervise their livestock.

<sup>20</sup> Of the nomadic people in Central Asia, the Uzbeks were the most notable example of a group that ultimately opted for a more sedentary existence.

<sup>21</sup> Asiya Baigozhina, *Kazakhstan: A Dilettante's Marginal Notes on National*

mortar, Kazakhs built no great cities and left behind no massive monuments like those found in the Uzbek city of Samarkand.<sup>22</sup>

The lifestyle also affected attitudes toward property. Kazakhs were not particularly materialistic.<sup>23</sup> They traveled in "yurts," which were round tents made of felt. Designed for portability, yurts contained little furniture.<sup>24</sup> Personal possessions had to be carried. Excessive accumulation of personal goods, therefore, represented a liability.

Nomadic societies were generally tolerant and egalitarian, with little class stratification.<sup>25</sup> Family ties were strong, and political control was weak. Moreover, although these societies were patriarchal, women played a central role in Kazakh society.<sup>26</sup> In addition, they had a highly dependent relationship

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*Literature*, 70 WORLD LITERATURE TODAY 527, 527 (1996).

<sup>22</sup> Samarkand can be referred to as an Uzbek city because it lies in modern day Uzbekistan. Based upon nationality, however, most of the population is Tajik. Kazakhs sometimes do lay claim to the city of Otrar. Housing a rival to Ghengis Khan, the city was devastated following a six month siege in 1219, long before the traditional dates given for the inception of the Kazakh nation. See *History Page* (visited Jan. 20, 1998) <[http://www.internews.ras.ru/ASIA-PLUS/bulletin\\_10/history\\_page.html](http://www.internews.ras.ru/ASIA-PLUS/bulletin_10/history_page.html)>. The city produced a number of significant historical figures, including Al Farabi (870-959 A.D.), a scholar and philosopher whose picture graces Kazakhstan currency. In addition, Tamerlane died in Otrar while preparing for his invasion of China. See *Timur* (visited Dec. 14, 1998) <<http://www.uznet.net/uzb/timuruzh.html>>.

<sup>23</sup> In the words of one Kazakh,

We are men of the desert, and here there is nothing in the way of riches or formalities. Our most costly possessions are our horses, our favourite food their flesh, our most enjoyable drink their milk and the products of it. In our country are no gardens or buildings. Our chief recreation is inspecting our herds.

KHAZANOV, *supra* note 19, at 47.

<sup>24</sup> See Rhoads Murphey, *An Ecological History of Central Asian Nomadism*, in *ECOLOGY AND EMPIRE* 41, 48 (Gary Seaman ed., 1989).

<sup>25</sup> See KHAZANOV, *supra* note 19, at xxii, 153 (noting that inequality in nomadic cultures puts the system of "co-operation and mutual aid" in jeopardy); see also THOMAS J. BARFIELD, *THE PERILOUS FRONTIER: NOMADIC EMPIRES AND CHINA* 7 (1989) ("Class relations were of little consequence in Inner Asia until the nomads became incorporated into sedentary states during the past few hundred years, or when they left the steppe and became part of a pre-existing class structure."). As one author stated, "[n]owhere in the world had the heads of the nation and the aristocracy by birth so little meaning, so little real strength, as the [Kazakh] Khans and Sultans." Andre Singer, *Contemporary Khanates: Compromises of Kazakh and Kirghiz Leaders*, in *ECOLOGY AND EMPIRE* 193, 200 (Gary Seaman ed., 1989).

<sup>26</sup> See THOMAS J. BARFIELD, *THE NOMADIC ALTERNATIVE* 146 (1993)

with the surrounding environment. Herd size ultimately depended upon the productivity of the pasture lands used by migrating Kazakhs.<sup>27</sup> Some trade did develop with neighboring sedentary populations, but generally did not constitute a large part of the nomadic economy.<sup>28</sup>

This description should not, however, suggest a romantic existence. Dependent upon herding, periodic droughts or long winters resulted in hardship and famine. War was a constant threat, with rich pasture lands inevitably coveted by others. For all of the difficulties, however, Central Asian nomads had rich and deeply imbued qualities. They recognized "martial prowess, hospitality, respect for elders, love for children, and ready aid to kinsmen as virtues."<sup>29</sup>

Nomadic lifestyle did not mean an absence of art or literature. Until the nineteenth century, Kazakhs relied on strong oral traditions. Epics about the Kazakh people arose almost contemporaneously with the formation of the Kazakh nation. As one writer described, "Every illiterate nomadic Kazakh, like all nomads of the world, was in the fifteenth to the eighteenth centuries simultaneously a shepherd and a soldier, an orator and a historian, poet and singer. All national wisdom, assembled by the ages, existed only in oral form."<sup>30</sup> Kazakhs also produced a number of renowned poets and literary figures, the best known

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("Women in steppe nomadic pastoral societies had more authority and autonomy than their sisters in neighboring sedentary societies, or pastoral nomadic societies in other regions...[w]omen played a key role in daily economic life.").

<sup>27</sup> Nomads in Central Asia tended to follow common migratory patterns and to return to the same winter and summer camp grounds each year. See *id.* at 144 (noting that nomadic migratory patterns were not random). In the eighteenth and nineteenth centuries, some groups of Kazakhs migrated between 1,000-1,500 kilometers annually. See NATURAL HISTORY MUSEUM OF L.A. COUNTY, NOMADS OF EURASIA 2 (1989) [hereinafter NOMADS OF EURASIA].

<sup>28</sup> Nomads traded for things not otherwise produced, particularly for grains and metal goods. As contacts increased, they obtained luxury goods such as tea. Kazakhs would, in turn, trade animals or animal products for the goods. See ECOLOGY AND EMPIRE, *supra* note 24, at 52.

<sup>29</sup> NOMADS OF EURASIA, *supra* note 27, at 6.

<sup>30</sup> The language is from S.E. Tolybekov, and quoted in KHAZANOV, *supra* note 19, at xxi. For a discussion of Kazakh oral traditions, see Gulnar Kendirbaeva, *Folklore and Folklorism in Kazakhstan*, in 53 ASIAN FOLKLORE STUDIES 97 (1994).



being Abai Kunanbaev.<sup>31</sup>

Kazakh traditions, however, would be tested by the inevitable contact with more expansionist and irredentist cultures in the region, particularly from Russia. The absence of permanence and the fragile nature of Kazakh culture would mean that preservation would require deliberate and protracted efforts. Russian domination would ultimately change Kazakh traditions and lifestyle.

### 1.1. *The Russian Era*

Inexorable Russian expansion into Central Asia had a profound effect on Kazakh culture and life style. In particular, the decentralized and unstratified nature of the Kazakh society came under assault, as did the growing emphasis on land ownership and agriculture. Some aspects of nomadic culture survived; many did not.

As an imperialist power, Russia initially focused its efforts on sparsely populated Siberia and on the drive to reach the Pacific Ocean. Once completed, however, attention turned to the steppe. Expansion provided increased security for Russia's Asiatic possessions, and also protected caravans transporting Russian goods. Control also promised to provide greater access to the markets in the more populated cities of Kokand, Bukhara and Khiva.<sup>32</sup>

Russian expansion into the Kazakh steppe began in the eighteenth century and was completed by the nineteenth century. The Kazakhs themselves provided the excuse for Russian suzerainty, not that one was really needed. The Kalmyks, the last significant group of Mongol invaders, had spread into Kazakh territory and held sway over central Kazakhstan by the 1720s. Viewing the Russians as lesser evils, the Small Zhus in 1731 and the Middle Zhus in 1732, expressed fealty to the Russian Empress in an effort to obtain protection from the Russian empire.<sup>33</sup> It

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<sup>31</sup> Abai lived from 1845-1904. Abai has been described as the founder of Kazakh literature. See Baigozhina, *supra* note 21, at 528.

<sup>32</sup> All three cities are in modern day Uzbekistan. See DEMKO, *supra* note 18, at 34.

<sup>33</sup> See OLCOTT, *supra* note 13, at 30-31, 39-40. The leaders of the Middle Zhus repeated the process in 1742. One of the leaders to do so was Ablai Khan, perhaps the last strong, independent Kazakh leader. Ablai Khan's name now graces a boulevard in Almaty.

would be another eighty years before the Great Zhuz would feel compelled to do the same thing. Russia used these events as the rationale for annexing the steppe completing the process in the 1850s.<sup>34</sup>

From almost the beginning of the Russian occupation, the government sought to end the Kazakh's migratory existence. Mobile, hard to control nomads on the Russian border presented a security threat and made administration more difficult. Policies emanating from St. Petersburg tried to restrict migration and encourage a sedentary existence.

The sedentary approach, however, required the introduction of concepts antithetical to the Kazakh attitude toward property and wealth. Although each Zhuz had traditional grazing territories, the concept of private ownership of land did not exist.<sup>35</sup> Wealth arose not from real property but from herd size.<sup>36</sup> The transition to a sedentary existence was destined, therefore, to put strains on Kazakh culture. Institutions, approaches and customs that developed in a nomadic environment were not necessarily suited for such a radically different lifestyle.<sup>37</sup>

Sedentarization resulted in greater inequality, increased urbanization and larger families.<sup>38</sup> Mostly, though, it brought about an "impoverishment of nomads."<sup>39</sup> Nomadic lifestyle in Kazakhstan had an ecological explanation. Much of Kazakhstan was not suited for an agricultural economy. With marginal rainfall, only a developed system of irrigation would allow for successful cultivation. Without the necessary capital improvements, forced sedentarization simply resulted in a decline in living standards.

In addition to sedentarization, policies in St. Petersburg

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<sup>34</sup> See *id.* at 71.

<sup>35</sup> See NOMADS OF EURASIA, *supra* note 27, at 4 (noting that land was allotted on a first come, first serve basis within groups using particular pasture land each season).

<sup>36</sup> See KHAZANOV, *supra* note 19, at 123.

<sup>37</sup> Kazakhs viewed settled people "with disdain as people who had lost all social standing." 20 ALFRED E. HUDSON, KAZAKH SOCIAL STRUCTURE 35 (1938).

<sup>38</sup> See KHAZANOV, *supra* note 19, at 129 (noting that as nomads became more settled, family size increased); see *id.* at 158 (noting that inequality often accompanies incorporation of nomads into sedentary state).

<sup>39</sup> *Id.* at 83.

encouraged immigration into the steppe region.<sup>40</sup> Russians, Ukrainians, and other Slavic people flooded into Central Asia. Most settled in Kazakhstan.<sup>41</sup> To meet the needs of these new settlers, the Russian government seized Kazakh land.<sup>42</sup> The wide-open steppe always seemed to be excess land available to immigrants, despite its obvious importance to Kazakh grazing.<sup>43</sup>

The first waves of immigration occurred in the eighteenth century with the creation of a number of Cossack settlements in northern Kazakhstan. These efforts did not portend a systematic attempt to settle the steppe and were primarily defensive in nature.<sup>44</sup> More general immigration began in earnest in the 1860s. By 1897, the Russian<sup>45</sup> population of Kazakhstan hovered around 16%.<sup>46</sup> In particular, large numbers of immigrants settled in Akmolinsk and concentrated themselves almost exclusively in the steppes in the north, with the exception of the southwestern oblast of Semirechie.<sup>47</sup>

The most significant waves of immigration under Tsarist Russia occurred between 1897 and 1916. On the eve of the

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<sup>40</sup> Any number of reasons could explain the approach. For example, since Kazakhstan was the closest Central Asian nation to more traditional Russian territories, the government in Moscow (or, at the time, St. Petersburg) may have felt a greater need to eliminate the threat and pacify the area, primarily through russification. The approach may also have arisen out of the belief in the superiority of a sedentary culture over a nomadic one.

<sup>41</sup> Between 1896 and 1916, one-third of all immigrants settling in Asiatic Russia (Siberia and Central Asia) went to Kazakhstan. See DEMKO, *supra* note 18, at 121.

<sup>42</sup> See Mikhail Alexandrov, *Russian Migration to Kazakhstan* (visited Dec. 14, 1998) <<http://www.Arts.unimelb.edu.au/Dept/CERC/buljun.htm>>.

<sup>43</sup> Some of the explanation for the high level of immigration was timing. Absorbed into the Russian empire before the rest of Central Asia, the Kazakh steppes were accessible to settlers for a longer period. Yet even after the annexation of other portions of Central Asia, Kazakhstan was a favorite choice of immigrants. See *infra* 924-25.

<sup>44</sup> See DEMKO, *supra* note 18, at 37.

<sup>45</sup> The word Russian here encompasses all Slavic people in the former Soviet Union, including Ukrainians and Belorussians.

<sup>46</sup> The numbers were based on the 1897 census, which was the first to include Kazakhstan. See DEMKO, *supra* note 18, at 9. Demko noted that the percentage included offspring; therefore, the percentage cannot entirely be equated with the number of immigrants. See *id.* at 76. While Russians reached 16%, the total population of all Europeans was apparently higher. See ROBERT A. LEWIS ET AL., NATIONALITY AND POPULATION CHANGE IN RUSSIA AND THE USSR 149 (1976).

<sup>47</sup> See DEMKO, *supra* note 18, at 97.

revolution, the influx had transformed the territory from one with a relatively homogenous population of Kazakhs to one in which Russians accounted for more than 20% of the population.<sup>48</sup> Moreover, as better quality land in the north became more scarce, immigrants in large numbers moved to southern areas. Only the desert and semi-desert areas seemed immune from the massive waves of immigrants.

Immigration had a traumatic affect on the Kazakh way of life. As more and more land was apportioned to immigrant farmers, grazing suffered. Kazakhs found it increasingly difficult to find adequate land to feed their herds. The result was a general decline in the standard of living for most Kazakhs.<sup>49</sup> Even those who accepted a sedentary lifestyle were often no better off. To the extent they even had their own land to farm, it was frequently of a low quality.<sup>50</sup> Nor were serious efforts made to improve circumstances by, for example, developing an adequate system of irrigation to make farming more viable.<sup>51</sup>

Kazakhs did not accept their fate in a passive fashion. The history of Russian occupation is replete with examples of revolts, unrest and efforts to throw off Russian domination. The most serious was possibly the ten year struggle from 1837 to 1847 of the Middle Zhuz, led by Kenesary Qasimov, a grandson of Ablai Khan.<sup>52</sup> A more widespread revolt in Central Asia, including Kazakhstan, occurred in 1916 in response to the government's efforts to form labor detachments to support the war effort against Germany.

The efforts inevitably failed, in part because of a lack of unity among Kazakhs and in part because of the inexorable might of the Russian colossus. The Russian response to the uprisings was typically harsh, further inflaming local sentiment. Moreover, the revolts invariably resulted in tighter control and increased efforts to further weaken Kazakh culture and identity.

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<sup>48</sup> The total population of Kazakhs was about 3.7 million; the total population of Russians was about 1.3 million.

<sup>49</sup> See DEMKO, *supra* note 18, at 203.

<sup>50</sup> See KHAZANOV, *supra* note 19, at 220 (noting that in the 19th century the best lands were taken by Russian immigrants).

<sup>51</sup> See DEMKO, *supra* note 18, at 203 ("Although about 30% of the Kazakhs adopted a sedentary life [by 1916] either by example or necessity, many were landless, held inadequate allotments, or occupied land in very marginal areas.").

<sup>52</sup> See OLCOTT, *supra* note 13, at 41.

The trauma of Russian rule was greater on Kazakhs than on the other absorbed nationalities in Central Asia. Other nationalities retained their independence much longer. Tashkent only fell in 1865; Khiva in 1873.<sup>53</sup> Some territories even remained nominally independent after Russian conquest, with the Emirate of Bukhara not fully absorbed until after the Russian Revolution. These territories also generally had larger numbers of settled people and less open land that could be so easily appropriated. In 1917, estimates placed 1.5 million Russian settlers in Kazakhstan, compared to only 400,000 Russians present in the rest of Central Asia.<sup>54</sup>

### 1.2. *The Soviet Era*

Kazakhs were forced into sedentary life through economic debilitation, and not through government assistance or encouragement. As the best grazing lands were increasingly appropriated, herding became less viable. Still, on the eve of the Russian Revolution, some 25% of the Kazakh population remained entirely dependent upon animal husbandry for sustenance.<sup>55</sup>

During the Russian Revolution, Kazakhstan existed briefly as an autonomous state under the Alash Orda.<sup>56</sup> The movement was, however, short lived. When White forces announced they would not support Kazakh autonomy, the Alash Orda allied itself with the Bolsheviks, making absorption into the Soviet Union inevitable. With the formation of the Kirgiz Autonomous Soviet Socialist Republic in 1920,<sup>57</sup> Kazakhstan officially became part of

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<sup>53</sup> See, e.g., John Arlidge et al., *The Republics: When the Centre Cannot Hold*, THE INDEPENDENT (London), Aug. 30, 1991, at 9.

<sup>54</sup> See WHEELER, *supra* note 16, at 103.

<sup>55</sup> See OLCOTT, *supra* note 13, at 92. By 1926, 6% were classified as perennial nomads and 30% sedentary. See DEMKO, *supra* note 18, at 189; see also Olga B. Naumova, *Evolution of Nomadic Culture Under Modern Conditions: Traditions and Innovations in Kazakh Culture*, in RULERS FROM THE STEPPE: STATE FORMATION ON THE EURASIAN PERIPHERY 291, 292 (Gary Seaman & Daniel Marks eds., 1991) ("Even at the end of the 1920s, . . . about 72% of Kazakh husbandry in Kazakhstan was still cattle-breeding or complex agricultural cattle-breeding and half the population still lived a nomadic or semi-nomadic lifestyle.").

<sup>56</sup> See OLCOTT, *supra* note 13, at 129, 139.

<sup>57</sup> Kazakhs were often referred to as Kyrgyz. This was apparently done to distinguish Kazakhs from Cossacks.

the Soviet Union.<sup>58</sup>

Kazakh unhappiness with Russian domination meant that few mourned the passing of the Tsarist regime. Yet it would seem almost benign compared with what followed. In the 1920s and 1930s, Stalin was determined to impose a new economic order that included collectivization of farms and herds. The nomadic lifestyle would come to an end, at a horrendous cost.

Initially, Soviet policies seemed more predisposed toward the different peoples in Central Asia than the Tsarist policies had been. Lenin promised to accord the right of self-determination. Under the Nationalities Policy, the region was divided into territories that roughly coincided with ethnic boundaries.<sup>59</sup> What had been Turkestan, with a capital in Tashkent, was broken down into several republics and autonomous regions.<sup>60</sup> For the first time since Russian domination, Tajiks, Kyrgyz, Uzbeks and Turkmen received their own territories.<sup>61</sup>

With respect to Kazakhstan, however, little changed. No serious thought was given to self-determination. Organized as an autonomous region in 1924 and upgraded to a republic twelve

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<sup>58</sup> Organized as the Kyrgyz Autonomous Region in 1920, Kazakhstan was upgraded to a republic in 1936. See NUPI, Center for Russian Studies Database, *Ethnic Groups* (visited Dec. 14, 1998) <<http://www.nupi.no/cgi-win/Russland/etnisk-b.exe/Kazakhian.html>>. The rest of the region was organized into the Turkestan Soviet Republic (consisting of the oblasts of Syrdar'ya, Semirech'ye, Fergana, Samarkand, Transcaspia and the Amu-dar'ya Military Division) and the People's Republics of Khorezm (Khiva) and Bukhara. See WHEELER, *supra* note 16, at 114, 119.

<sup>59</sup> Some contend that the division was not designed to promote a sense of national identity, but rather to prevent the emergence of a more dangerous regional identity. Given that most people in the region had a common ethnic heritage (turkic), a common language base (again, turkic) and a common religion (Islam), rulers in Moscow perhaps had reason to fear the emergence of some type of pan-turkic identity. Nonetheless, at the time separate states were created, no significant movement apparently existed that promoted a regional identity.

<sup>60</sup> See WHEELER, *supra* note 16, at 126. Only Uzbekistan and Turkmenistan initially were socialist republics. Tajikistan received the status in 1929; Kazakhstan and Kyrgyzstan in 1936. See *id.* The decision to divide the region into separate republics not only contributed to a rise in nationalistic sentiments, but also prevented more regional loyalties from developing.

<sup>61</sup> The boundaries were not precise. Large numbers of Kyrgyz, for example, lived in the Uzbek Soviet Socialist Republic. The Tajik Autonomous Region contained large numbers of Uzbeks. Moreover, the boundaries could not reflect ethnic populations outside of the Soviet Union. One million Kazakhs live in China. See *infra* note 66.

years later, Kazakhstan included not only the Steppe Region but also the traditional territories of the Great Zhuz, particularly the oblasts of Syrdarya and Semirech'ye. Nonetheless, Soviet policy preserved the Tsarist distinction between nomadic and sedentary people.<sup>62</sup> Kazakhstan and the steppe were not considered part of Soviet Central Asia.<sup>63</sup>

Annexation was followed by aggressive efforts to restructure Kazakh life. Considered the last great nomadic people, many Kazakhs had continued to live a migratory existence through the 1920s. Even those who opted for farming often viewed the activity as an adjunct to animal husbandry, cultivating crops to provide winter-feed for herds. Stalin, however, ordered collectivization and, in 1928, instituted a five-year plan designed to accomplish the task.<sup>64</sup>

Implementation was quick and brutal. Herds were seized, particularly those belonging to rich peasants (bays), and farms collectivized. Rather than relinquish their flocks to the state, many Kazakhs simply killed their animals.<sup>65</sup> Mass starvation followed. Hundreds of thousands died in the process while others left the country.<sup>66</sup> The size of herds and meat production would not again reach pre-collectivization levels for a generation. Many Kazakh leaders who resisted the policies would perish in Stalin's purges. For example, Turar Ryskulov was executed in

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<sup>62</sup> In Tsarist days, the division between nomadic and sedentary peoples was not precise. Turkestan also contained some nomadic people (Kyrgyz and Kazakhs). See WHEELER, *supra* note 16, at 66.

<sup>63</sup> See AKINER, *supra* note 60, at 81.

<sup>64</sup> This is at least true for the Kazakhs in Kazakhstan. Sixty years later, some Kazakhs still led a nomadic life in China. See *China's Nationalities: Kazakh Nationality*, XINHUA GENERAL OVERSEAS NEWS SERVICE, Jan. 20, 1992, available in LEXIS, Asiapc Library, Xinhua File [hereinafter *China's Nationalities*].

<sup>65</sup> See OLCOTT, *supra* note 13, at 183-84.

<sup>66</sup> For a discussion of the collectivization period, see P.A. MICHAELS, RED SANDS: COLLECTIVIZATION IN KAZAKHSTAN, 1928-32 (1991). The study noted the absence of first hand accounts about the use of force to implement the enforced settlement of Kazakhs; an omission traced to the unwillingness of Soviet leaders to permit the preservation of unflattering portraits of their policies in Central Asia. The diaspora has resulted in large Kazakh populations outside of traditional lands. More than a million Kazakhs live in China, for example, with another 120,000 in Mongolia. See Summer Institute of Linguistics, *Ethnologue: Kazakhstan* (visited Oct. 11, 1998) <<http://www.sil.org/ethnologue/countries/Kaza.html>> [hereinafter Summer Institute of Linguistics].

1939, in part, because of his opposition to the collectivization program imposed by Moscow.<sup>67</sup>

The catastrophe of collectivization resulted in Kazakhs becoming a minority in their own country. Between 1926 and 1939, the number of Kazakhs fell from 3.7 million to 2.3 million.<sup>68</sup> At the same time, the Russian population increased to 2.5 million, representing 40% of the total population compared with Kazakhs representing 38% of the population.<sup>69</sup> It would be fifty years before Kazakhs would again constitute a plurality.<sup>70</sup>

Soviet policies also continued to encourage immigration into the territory. Kazakhstan saw large influxes of Koreans and Poles in the 1930s, and Germans in the 1940s as Stalin resettled whole nationalities in the region.<sup>71</sup> The country also continued to be a favorite place for exiling unwanted officials, with Trotsky being the most famous example.<sup>72</sup> Other immigrants entered the country when Stalin moved heavy industry to Kazakhstan to prevent seizure by German armies.<sup>73</sup>

Most notably, however, the "virgin lands" program resulted in large numbers of Russians settling in the north. Developed under Khrushchev and his ally, Leonid Brezhnev, the party secretary in Kazakhstan, the program dedicated large swathes of the land in the steppe region to the cultivation of grain.<sup>74</sup> In addition to appropriating more land traditionally used for grazing, the "virgin lands" program resulted in increased immigration.<sup>75</sup> Even today, the populations in many of the

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<sup>67</sup> As one Kazakh writer stated, "The Soviet years were an epoch of stagnation; the most talented transmitters of language, tradition, culture—the flower of the nation—were persecuted and annihilated..." Baigozhina, *supra* note 21, at 529.

<sup>68</sup> See Robert Kaiser & Jeff Chinn, *Russian-Kazakh Relations in Kazakhstan*, 36 POST SOVIET GEOGRAPHY 257, 258-59 (1995).

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *Kazakhstan: Human Development Report*, *supra* note 12, at ch. 1.1; Alexandrov, *supra* note 42.

<sup>72</sup> He was exiled to Alma Ata (now Almaty), and spent most of 1928 there. See DMITRI VOLKOGONOV, *TROTSKY: THE ETERNAL REVOLUTIONARY* 306 (Harold Shukman trans. & ed. 1996). The use of Kazakhstan as a place of exile was not invented by the Soviets but began under the Tsars. Dostoyevsky spent time in Kazakhstan.

<sup>73</sup> See OLCOTT, *supra* note 13, at 189.

<sup>74</sup> See *id.* at 226-27.

<sup>75</sup> In 1954-1955, 640,000 people immigrated to Kazakhstan from other



oblasts in northern Kazakhstan have Russian majorities.<sup>76</sup>

Despite the large amount of land dedicated to the program, production never lived up to expectations. The "virgin lands" program, however, did have at least one unintended but long lasting consequence. As increased livestock breeding and cultivation failed to meet expectations, a revolving door developed at the office of first secretary in Kazakhstan. In 1959, the post went to Dinmukhamed Akhmedovich Kunaev. Ousted by Khrushchev three years later but reappointed by Brezhnev in 1964, Kunaev would remain in office until 1986.<sup>77</sup> He was in a position to and did insure that Kazakhs received greater representation within the party structure in Kazakhstan.<sup>78</sup>

Soviet assault took other forms. The Latin alphabet replaced Arabic script in 1928; a Cyrillic alphabet replaced Latin in 1941.<sup>79</sup> Schools in the urban centers were conducted in Russian,<sup>80</sup> with many Kazakhs in the largest cities losing the ability to speak their native language fluently.<sup>81</sup> Nor was there much affirmative support for Kazakh culture and institutions. Classes were not typically offered in Kazakh history or literature; lessons on these

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parts of the Soviet Union. See Alexandrov, *supra* note 42.

<sup>76</sup> The Kazakh leadership opposed the efforts, to no avail. See BOHDAN NAHAYLO & VICTOR SWOBODA, *SOVIET DISUNION: A HISTORY OF THE NATIONALITIES PROBLEM IN THE U.S.S.R.* 116 (1989).

<sup>77</sup> Kunaev also had the distinction of becoming the first and only Kazakh to be appointed to the Politburo.

<sup>78</sup> Following purges in the early 1930s, the percentage of Kazakh membership went over 50%. See MICHAELS, *supra* note 66, at 73. This percentage represented a high water mark, with Kazakhs representing a minority in the local Communist Party and, until the appointment of Kunaev, lacking any meaningful role in the organization. See OLCOTT, *supra* note 13, at 221-23.

<sup>79</sup> See AKINER, *supra* note 60, at 83. In contrast, Kazakhs in China still used Arabic script. See *China's Nationalities*, *supra* note 64.

<sup>80</sup> In Almaty, the capital of Kazakhstan, only one school was taught in Kazakh. See Mikhail Guboglo, *Demography and Language in the Capitals of the Union Republics*, J. SOVIET NATIONALITIES 1, 28-29 (Winter 1990-91). By contrast, Uzbeks could throughout the Soviet period attend schools in their native language. See William Fierman, *Language, Identity, and Conflict in Central Asia and the Southern Caucasus*, 2 PERSP. CENT. ASIA 5 (1997) <<http://www.cpss.org/casianw/perca0897.txt>>.

<sup>81</sup> At independence, perhaps half of the Kazakh population could not speak Kazakh fluently. Those that attended Russian speaking schools sometimes received lessons in Kazakh. The approach, however, was to treat Kazakh like any foreign language and provide only a few hours of instruction per week. Interview in Kazakhstan (May 1997) (on file with author).

subjects occurred only in the home. The Soviet period also saw an assault on Islam, with mosques and madrassas (religious schools) closed.<sup>82</sup>

Moreover, the role of Kazakhstan and Central Asia in the Soviet system would become more clearly defined, with exploitation of the centerpiece. The region was to provide raw materials for the remainder of the Soviet Union. Kazakhstan escaped the cotton mono-culture imposed on many of its southern neighbors, particularly Uzbekistan.<sup>83</sup> Nonetheless, it was viewed as a source of raw materials, particularly food supplies and natural resources.

Attitudes about the steppe could also be gleaned by the decision to designate Kazakhstan as the primary sight for the Russian nuclear weapons program. On August 29, 1949, the Soviet government began testing weapons at Semipalatinsk; they tested above ground until 1963 and below ground thereafter.<sup>84</sup> Between 1949 and 1989, almost 500 tests occurred in Kazakh territory, including 26 above ground.<sup>85</sup> In addition to laying waste to land used in the testing, Kazakhstan would suffer from an increased mortality rate and illnesses related to radiation.<sup>86</sup>

### 1.3. *The End of the Empire*

The Soviet era brought benefits to Kazakhstan. A 98% literacy rate was one.<sup>87</sup> Universal healthcare was another. The Soviet health system eradicated a number of diseases and doubled

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<sup>82</sup> See AKINER, *supra* note 60, at 84 (“[T]he attacks on Islam in Central Asia were particularly virulent, since this religion was not only a belief system, but also a rival political philosophy, one that offered a vision of an alternative social (and in many respects socialist) order.”).

<sup>83</sup> See Elif Kaban, *Uzbeks to Sell More Cotton But Not to Russia*, REUTER LIBRARY REPORT, Apr. 16, 1992, available in LEXIS, News Group File.

<sup>84</sup> The tests led to the formation of a protest movement in 1989. For a short chronology of the movement, see CENTRAL ASIA READER, *supra* note 12, at 177.

<sup>85</sup> See *Kazakhstan: Human Development Report*, *supra* note 12, § 2.4. The areas affected most by the testing were Semipalatinsk, East Kazakhstan and Karaganda.

<sup>86</sup> See KIMEP, *Environmental Impact of the Semipalatinsk Nuclear Complex* (visited Dec. 14, 1998) <<http://www.cep.yale.edu/projects/studcon/papers/97/zholaman.html>>.

<sup>87</sup> See *Kazakhstan: Human Development Report*, *supra* note 12, § 2.4 (demonstrating that the 1989 census placed the literacy rate at 97.5%). For literacy statistics, see Summer Institute of Linguistics, *supra* note 66.

the life span of the average Kazakh.<sup>88</sup> Bigamy was prohibited, and a minimum age of sixteen for marriage was established.<sup>89</sup> The population had also urbanized.<sup>90</sup>

While Stalin's method of enforced immigration of nationalities raised many concerns, it also left Kazakhstan with a diverse population and a rich ethnic composition.<sup>91</sup> The country had also undergone industrialization and been transformed into an agricultural powerhouse, becoming one of the world's largest producers of grain.<sup>92</sup>

After seventy years of Soviet rule, however, unmistakable signs of dissatisfaction were surfacing. When Gorbachev appointed Gennadii Kolbin, a Russian, to replace Kunaev, a Kazakh, in 1986, demonstrations ensued.<sup>93</sup> Some of the opposition may have been genuine support for Kunaev. Some, however, arose from Moscow's decision to replace a Kazakh with a Russian. Kolbin's popularity never recovered from the turmoil and, tilting toward the reality of nationalistic sensitivities, Gorbachev ultimately replaced him with Nazarbayev, a Kazakh, a few years later.

The protests were not limited to political developments. Kazakhstan witnessed one of the first significant grass roots movements in Central Asia. In February 1989, Olzhas Suleimenov started Nevada-Semipalatinsk, an organization whose goal was to end nuclear testing in Kazakhstan.<sup>94</sup> Petitions circulated by the organization received widespread support.

Despite growing signs of unhappiness with Moscow and the reality that Kazakhstan was increasingly populated and run by

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<sup>88</sup> For instance, malaria was eliminated. Between 1913 and the 1960s, infant mortality fell by a factor of 10, general mortality by a factor of three, and average life expectancy doubled. See *Kazakhstan: Human Development Report*, *supra* note 12, § 2.3.

<sup>89</sup> See *id.* at ch. 2.

<sup>90</sup> See *id.* § 2.4 (placing the urban population at 56%). By 1979, 54% of the country lived in metropolitan areas, with Kazakhs representing only 20.8% of that population. See Naumova, *supra* note 55, at 295.

<sup>91</sup> Excluding Kazakhs and Russians, the six largest ethnic groups in Kazakhstan are, in decreasing order, Germans, Ukrainians, Uzbeks, Tatars, Belorussians, and Koreans. The country also has about 30,000 Jews, although many may have emigrated. See Summer Institute of Linguistics, *supra* note 66.

<sup>92</sup> See *infra* note 203.

<sup>93</sup> For what appears to be first hand descriptions of the event, see NAHAYLO & SWOBODA, *supra* note 76, at 254.

<sup>94</sup> See *id.*

Kazakhs, independence came about almost by accident. More than the other republics in the region, the leadership in Kazakhstan had retained close ties with the Kremlin. Kunaev had been an ally of Brezhnev; Nazarbayev was a friend of Gorbachev. Nazarbayev saw Kazakhstan as an integral part of the Soviet system.<sup>95</sup>

He initially took advantage of Moscow's weakening grip to obtain more autonomy, enhancing his own authority. Nazarbayev wanted greater control over Kazakhstan's natural resources. He also took steps to promote Kazakh identity. In 1989, he designated Kazakh as the national language, bringing him into greater conformity with other republics in Central Asia.<sup>96</sup> Nonetheless, as the break up of the Soviet Union accelerated, Nazarbayev remained loyal to the existing regime. Only on December 16, 1991, after the Soviet Union had already been officially dissolved, did Kazakhstan declare independence, making it the last republic in the former Soviet Union to do so.<sup>97</sup>

Nor did government policies in the immediate aftermath unequivocally embrace independence. Nazarbayev, the last party secretary, continued to be the head of state. The ruble remained the national currency; fiscal policies were determined in Moscow.<sup>98</sup> Early political initiatives were designed to promote close relations between Kazakhstan and Russia, with Nazarbayev one of the early proponents of the Commonwealth of Independent States ("CIS").<sup>99</sup>

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<sup>95</sup> See OLCOTT, *supra* note 13, at 257.

<sup>96</sup> See Kaiser & Chinn, *supra* note 68 at 263. The practical effect, however, was slight. Russian was still necessary for any significant position within the Party or the government.

<sup>97</sup> The agreement by Russia, Ukraine, and Belarus to dissolve the Soviet Union and create the Commonwealth of Independent States made independence a *fait accompli*. In Central Asia, the first country to declare independence was Kyrgyzstan, which did so on August 31, 1991. The same day, Uzbekistan declared independence. Tajikistan was next on September 9, with Turkmenistan following on October 27. See *Kazakhstan: 1996*, BUS. INTELLIGENCE REP. WORLD OF INFO., Oct. 1996, available in LEXIS, News Group File.

<sup>98</sup> Kazakhstan only introduced a national currency, the *tenge*, in November of 1993, almost two years after independence. Moreover, it did so only after Russia insisted on unacceptable control over Kazakhstan fiscal policy as a condition for continued use of the ruble. See *Stabilization, Transformation, and Fiscal Adjustment in Transition Economies*, IMF WORLD ECON. OUTLOOK, OCT. 1994, available in LEXIS, News Group File.

<sup>99</sup> When the CIS formed initially, it amounted an all Slavic organization,

Compared with Afghanistan,<sup>100</sup> which had resisted imperial conquest, and India, which had been subjected to British rule, Kazakhstan emerged from Soviet control with higher rates of literacy and universal health. Compared with other republics in Central Asia, however, the record was more mixed. Other republics had also obtained the health and literacy benefits of the Soviet system, but without the same interference with cultural and national identity that occurred in Kazakhstan.<sup>101</sup>

## 2. ETHNIC DIVISIONS, ECONOMIC DISLOCATION, AND INDEPENDENCE

Independence posed immediate difficulties. Large and sparsely populated, Kazakhstan emerged from the Soviet Union as the ninth largest country in the world.<sup>102</sup> Bordered by China, Russia, and Uzbekistan, Kazakhstan was surrounded by more densely populated, cohesive countries, all with aspirations for suzerainty or even control over the area. Moreover, the growing awareness of the rich cache of natural wealth made Kazakhstan a highly coveted territory.

To a large extent, a strengthened national identity represented the best defense from encroachment by these more irredentist powers. Bolstering national identity would not be easy. Upon independence, Kazakhs were still a minority in their own

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with Russia, the Ukraine and Belarus participating. Nazarbayev was one of the principal proponents of including non-Slavic countries. This occurred at a meeting held in late December of 1991 in Almaty. See *A Commonwealth of Presidents There Is, But Will There Be a Commonwealth of Peoples?*, SOVIET PRESS DIGEST, PRAVDA, Dec. 23, 1991, at 1-2.

<sup>100</sup> Afghanistan, which remained independent of Russian or British control, has a literacy rate of about 12%. See Summer Institute of Linguistics, *Ethnologue: Afghanistan* <<http://www.sil.org/ethnologue/countries/Afgh.html>>.

<sup>101</sup> See AKINER, *supra* note 60, at 84 ("The level of illiteracy in the southern republics in the early Soviet period was above 95%; within 50 years it had virtually been eradicated."). Of course, they also incurred other harms. The cotton mono-culture in Uzbekistan resulted in permanent environmental damage, including precipitous drops in the water level of the Aral Sea. See Steve Levine, *World Looks Away as a Sea Vanishes: The Environmental Catastrophe of the Shrinking Aral Sea*, FIN. TIMES (London), Sept. 12, 1994, at 4. This paragraph in the text does not suggest that only Kazakhs were harmed by Soviet control, but rather that Kazakhs suffered unique damage to their culture and lifestyle.

<sup>102</sup> See Dr. Gregory Andrusz, *Kazakhstan—Political Perspectives and Military Prospects*, JANE'S INTELLIGENCE REV., Apr. 1, 1993, at 174.

country. Efforts to promote greater Kazakh identity would likely generate internal conflict among other nationalities in the country, particularly the Slavic population.

Efforts to strengthen Kazakh culture also had to be considered in the context of a radically changing economic environment. The command economy had been based on the production needs of the entire Soviet Union and a decision making process centered in Moscow. Now independent, Kazakhstan found itself with a vastly reduced market and the pieces of industry that happened to be located within its boundaries. The country grew grain but had few food-processing facilities; it had prodigious amounts of oil and gas but little refinement capacity.

In some ways, implementing open markets and strengthening Kazakh identity involved conflicting goals. Programs designed to promote the Kazakh language confronted open market incentives promoting the need to study a foreign language, particularly English. Similarly, implementation of a consumer economy necessarily meant a reduced importance of family ties and traditional Kazakh subdivisions, particularly the *Zhus* or hordes.

### 2.1. *The Politics of Population*

Nazarbayev confronted the immediate need to strengthen Kazakh identity, something that had undergone considerable erosion under Russian/Soviet domination. Demographically, the republic had become increasingly Kazakh. Reduced immigration and a high Kazakh birthrate resulted in Kazakhs becoming a plurality in 1989, the first time that had occurred since collectivization.<sup>103</sup> Nonetheless, the country was, at independence, more Slavic than Kazakh<sup>104</sup> and the only country

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<sup>103</sup> See Kaziser & Chinn, *supra* note 68, at 259. Plurality here meant there would be more Kazakhs than Russians. Compared to all Slavic people in the country, Kazakhs were not a plurality. In 1989, shortly before independence, Kazakhstan had 16.46 million people, 39.7% of which were Kazakh, 37.8% Russian, 5.8% Ukrainian, and 1.1% Belarussians. See *Protecting Russian's Interests in Kazakhstan*, 49 CURRENT DIG. SOVIET PRESS 1 (1997).

<sup>104</sup> Shortly after independence, the percentage of ethnic Russians was placed at about 37%, with ethnic Kazakhs at about 42%. See The World Factbook Page on Kazakhstan (visited Dec. 15, 1998) <<http://www.buck.com/cntry-cd/factbook/kz.htm>>. Other large groups included Ukrainian, Germans, and Uzbeks. See *id.* The percentage of Kazakhs, however, increased, both because of higher birth rates and continued emigration of other groups. By 1997, the percentage of Kazakhs had crossed 50% and the percentage of Russians had fallen to 32%. See *id.* Nonetheless, despite efforts to establish

in Central Asia in which the indigenous people constituted a minority within their own country.<sup>105</sup> Indeed, unlike other parts of Central Asia,<sup>106</sup> Russian had largely supplanted Kazakh as the most widely spoken local language.<sup>107</sup>

The six million Russians in Kazakhstan represented the largest concentration in Central Asia and, with the exception of Ukraine, the largest number outside of Russia.<sup>108</sup> Ominously,

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Kazakh as the official language of the country, Russian represents the *lingua franca*, spoken far more widely than Kazakh.

<sup>105</sup> Turkmenistan and Uzbekistan were the most homogeneous. Turkmen made up about 77% of Turkmenistan, Uzbeks about 74% of Uzbekistan. See Turkmenistan (visited Dec. 15, 1998) <<http://www.odci.gov/cia/publications/factbook/tx.html>>; The World Factbook Page on Uzbekistan (visited Dec. 15, 1998) <<http://www.buck.com/cntry-cd/factbook/uz.htm>>. Sixty-five percent of the population of Tajikistan was Tajik. See The World Factbook Page on Tajikistan (visited Dec. 15, 1998) <<http://www.buck.com/cntry-cd/factbook/ti.htm>>. Even Kyrgyzstan was more than half Kyrgyz. See The World Factbook Page on Kyrgyzstan (visited Dec. 15, 1998) <<http://www.buck.com/cntry-cd/factbook/kg.htm>>. See also *Kazakhstan: Human Development Report*, *supra* note 12, at ch. 1 ("Partly as a result of the massive loss of human life, Kazakhstan became the only republic of the U.S.S.R. where the indigenous population was not in the majority.").

<sup>106</sup> Russian was widely spoken in the region. It was necessary to know the language to participate in government or to communicate with the Russian population. Communication within each ethnic group, however, tended to take place in that group's native language. This was not true in Kazakhstan. With perhaps half of the Kazakh population not fluent speakers of Kazakh, they would communicate with each other in Russian. See Kaziser & Chinn, *supra* note 68. In that sense, the position of Russian in Kazakhstan was unique in Central Asia.

<sup>107</sup> The largest newspapers circulated in the country, *Karavan* and *Argumenti I Facti*, were both in Russian and had a circulation of about 250,000. See Kaziser & Chinn, *supra* note 68. The largest Kazakh language newspaper by contrast had a circulation of about 75,000. See *Kazakhstan Human Development Report*, *supra* note 12, at ch. 1 (noting that in 1991, only 17.6% of students in higher education and 34.4% in secondary schools were taught in Kazakh).

<sup>108</sup> Russians (used here to mean Russians, Ukrainians, and Belorussians) represented about 37% of the population in Kazakhstan at independence. By contrast, they constituted about 8% in Uzbekistan and 7% in Turkmenistan (using 1995 figures). See The World Factbook Page on Uzbekistan, *supra* note 105; Turkmenistan, *supra* note 105. In Tajikistan, the largest minority was Uzbek, at about 25%, with the Russian population at 4%. See The World Factbook Page on Tajikistan, *supra* note 105. Only in Kyrgyzstan was the Russian population substantial, amounting to about 22%. See the World Factbook Page on Kyrgyzstan, *supra* note 105. Population statistics in Kazakhstan said nothing about distribution. Russians tended to make up majorities in the major cities and to be concentrated in the north. Kazakhs were largely rural and concentrated in the south, central, and western regions

most of the Russian population continued to cluster in the north, at the Russian border.<sup>109</sup> Politicians in the Duma and prominent Russians, such as Solzhenitsyn, occasionally called for the reunification of all or part of Kazakhstan with Russia.<sup>110</sup> Nor was Russia the only country in the region coveting influence over Kazakhstan.<sup>111</sup>

Creating a stronger Kazakh identity represented a method of ensuring Kazakhstan's continued independence. In dealing with the reality of independence, Nazarbaev had a number of advantages. Although still divided into three Zhuz, Kazakhs retained a common identity and lacked the internal rivalries that racked some of the other countries in the region. Kazakhs had a common heritage, a common religion and a common language, even if, increasingly, it was Russian.

Initial efforts at increasing Kazakh identity took place inadvertently. Independence brought a number of disruptions, including a massive wave of emigration. Significant numbers of non-Kazakhs, particularly Russians and Germans, left the country.<sup>112</sup> The outflow deprived Kazakhstan of highly skilled and highly educated people.<sup>113</sup> One effect, however, was to accelerate the ethnic transformation of the country. These departures, coupled with the immigration from the Kazakh Diaspora,<sup>114</sup> and the higher birth rate, Kazakhs became a majority

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of the country. See *Kazakhstan Human Development Report*, *supra* note 12, at ch. 2.

<sup>109</sup> To better anchor the north to the country and make xenophobic Russian attitudes harder to implement, Nazarbaev decided to move the country's capital from Almaty in the south to Akmola in the north. By early 1997, the first tentative steps to implement the plan had begun.

<sup>110</sup> Of course, people like Vladimir Zhirinovskiy also called for the recovery of places such as Alaska, making many of his other statements devoid of credibility. Kazakhstan, however, was an entirely different matter. The geographic proximity and large Russian population (not to mention the wealth of natural resources) made reunification an appealing topic that could not be entirely ignored.

<sup>111</sup> In addition to Russia, Kazakhstan borders on China and Uzbekistan, both with larger populations.

<sup>112</sup> Through the end of 1996, the population of Russians had decreased by 800,000, and more than 500,000 Germans had emigrated. See *Protecting Russia's Interests*, *supra* note 103.

<sup>113</sup> See *Kazakhstan: Human Development Report*, *supra* note 12, at ch. 2. ("The educational level of emigrants is generally high.")

<sup>114</sup> China and Mongolia represented two sources of Kazakh immigrants. See *Statistical Data on Population: Indigenous Population Increases*, BBC



in the country for the first time in 1997.

The demographic trend had considerable significance. It meant that even without overt government action, Kazakhstan would become increasingly Kazakh. Rather than focus on ethnocentric policies that would alienate other groups, the focus could have centered on other attributes of Kazakh culture that had atrophied after so many years of Russian/Soviet neglect. Much of this could occur most energetically in a country with a healthy economic outlook.<sup>115</sup>

## 2.2. *The Distraction of Language*

Early efforts at nation building focused less on economic development and more on acute, divisive efforts designed to promote Kazakh identity.<sup>116</sup> In particular, the government sought to elevate the Kazakh language to national preeminence. This occurred despite the awareness that most Russians did not and would not learn to speak Kazakh.<sup>117</sup> The efforts, therefore,

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SUMMARY OF WORLD BROADCASTS, Aug. 28, 1992.

<sup>115</sup> Thus, the Wall Street Journal's contention in late 1997 that the decision to move the country's capital from Almaty in the south to Akmola in the north was because Kazakhs were "still a minority in their own land" misstated the facts and ignored the demographic developments that had occurred since independence. See Hugh Pope, *Mongol Hordes Left Mark on Kazakhstan Still Evident Today*, WALL ST. J., Oct. 27, 1997, at A1. Of course, Kazakhs were and are a minority in the northern part of the country.

<sup>116</sup> The issues have ranged from efforts to constitutionally require that the president be Kazakh (the final version required only fluency in Kazakh) to problems of dual citizenship, something sought by the Russian population but prohibited by Article 10 of the constitution of Kazakhstan. See Decree N2454 of the President of the Republic of Kazakhstan, Sept. 6, 1995, On the Constitution of the Republic of Kazakhstan, Sec. II, art. 10, para. 3. While returning Kazakhs can have dual citizenship, those living in Kazakhstan cannot. See *Kazakh Russians Say Citizenship Deal is "Discrimination,"* BBC SUMMARY OF WORLD BROADCASTS, Feb. 25, 1995, available in LEXIS, News Group File. The Russian population cannot, therefore, maintain citizenship of both Kazakhstan and Russia.

<sup>117</sup> According to one study, only 2.3% of all Russians in the country spoke Kazakh fluently. See M.M. Arenov & S.K. Kalmykov, *The Present Language Situation in Kazakhstan*, RUSS. EDUC. & SOC'Y 73, 76 (1997). The trend away from fluency in Kazakh represents a relatively recent phenomenon. Universal education for Kazakh children only began in the 1930s and 1940s. See generally MICHAELS, *supra* note 66, at 80-81. Classes were conducted in Kazakh. See *id.* Sending Kazakh children to Russian speaking schools apparently began in large numbers in the 1970s. Rather than by design of officials in Moscow, attendance at Russian speaking schools apparently occurred because of a desire by parents to provide their children with career upward mobility. Mobility

came at the expense of non-Kazakhs, particularly Russians, and drove a wedge between the two largest population groups, a result that had little apparent advantage.

Although language was a touchy and volatile issue, Kazakh was designated the state language in 1989, even before the collapse of the Soviet Union. Russian was left with the amorphous status as the language of "inter-national" communication. Kazakh also became a mandatory course of study for the first time. These reforms notwithstanding, language emerged as an important issue immediately upon independence. Little was done in the early years, with Nazarbaev seeking to avoid antagonizing the local Russian population and the xenophobic politicians in Moscow who had designs on the northern part of the country.

As the country became less tethered to Russia, however, attitudes in the government changed. The constitution of Kazakhstan, adopted in 1995, designated Kazakh as the language of Republic of Kazakhstan.<sup>118</sup> Russian was reduced to a language that was on par with Kazakh as used in "state institutions and local self-administrative bodies . . . ." <sup>119</sup>

The efforts were divisive and unnecessary. Even without government intervention, Russian was destined to decline in importance. Already advancement in government no longer required knowledge of the language, one of the main reasons Kazakhs initially opted to learn Russian. As Kazakhstan developed greater independence from Russia, other languages such as Chinese and English would prove more useful.<sup>120</sup> Indeed,

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depended upon membership in the Communist Party and fluency in Russian. Indeed, many of the non-fluent Kazakhs that I met in Almaty were the children of successful Communist Party officials.

<sup>118</sup> See Decree N2454 of the President of the Republic of Kazakhstan, Article 7.1, On the Constitution of the Republic of Kazakhstan, Sept. 6, 1995, available in <<http://www.kazaecon.kz/StockInfo/law/law-eng/constit>>.

<sup>119</sup> Article 7.2, On the Constitution of the Republic of Kazakhstan, Sept. 6, 1995.

<sup>120</sup> Tension exists between Kazakhstan and China. When Moslems in northern China rioted in the spring of 1997, China sealed its border with Kazakhstan. See Patrick E. Tyler, *In China's Far West, Tensions With Ethnic Muslims Boil Over in Riots and Bombings*, N.Y. TIMES, Feb. 28, 1997, at A8. Kazakhs also complain about the Chinese habit of testing nuclear weapons in the northern part of the country, with radiation from the blasts spreading to Almaty. Nonetheless, Kazakhstan has not let these problems interfere with growing economic relations. In one case, China outbid western oil companies and acquired a controlling interest in a Kazakhstan company, Aktyubinsk munaigaz. See Anthony Davis, *The Big Oil Shock*, ASIaweek, Oct.

other Turkic languages would likely become more important as ties among Central Asian neighbors continued to grow.<sup>121</sup> Trends underway would, therefore, elevate the importance of Kazakh at the expense of Russian, even without efforts to designate it the official language.

With Russian declining in importance, universal use of Kazakh could be ensured through changes in the educational system. The single most important step could be the introduction of Kazakh at all levels of the educational system. Doing so would require adequate funding and a sufficient number of trained personnel, neither of which is currently present in Kazakhstan. It would also require patience. Kazakh would only become the primary language gradually, over a generation.<sup>122</sup>

The emphasis on language had cultural consequences. Non-Kazakhs, particularly Germans and Russians, left in droves.<sup>123</sup> As a result, Kazakhstan became more Kazakh. At the same time, however, the country suffered economically. In general, those emigrating were well-educated and a likely source of entrepreneurial talent, which was desperately needed in the new economic system.

### 3. PRIVATIZATION AND KAZAKH REVITALIZATION

Attempts at cultural revitalization took place contemporaneously with economic transformation. In many respects, the trauma of independence resembled the crisis of collectivization. It involved the introduction of a radically different economic system. To be sure, capitalism would not

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10, 1997, at 16 (noting that China National Petroleum Corporation outbid Texaco, Amoco, and Yuzhimost of Russia). Plans have also been discussed for the construction of a pipeline from Kazakhstan to China. *See id.*

<sup>121</sup> A Turkic language, Kazakh is related to other languages in the region, including Uzbek and Kyrgyz. *See* Kazakh Profile (visited Dec. 14, 1998) <<http://www.lmp.ucla.edu/profiles/rofk01.htm>>.

<sup>122</sup> Indeed, the emphasis on Kazakh caused consternation among a significant portion of the urban Kazakh population. Having attended Russian speaking schools, many Kazakhs had not learned Kazakh. A recent study suggested that 71% of the Kazakh population considered themselves fluent in all aspects of the language (speaking, reading and writing) with the percentages in the cities being substantially lower. To the extent the Kazakhs learned another language, English seemed a more popular alternative.

<sup>123</sup> *See* Boris Lysenko, *The Germans are Packing and Leaving Kazakhstan*, RUSSIAN PRESS DIGEST, Apr. 12, 1994, available in LEXIS, News Group File.

cause mass starvation or an end to a traditional way of life. Nonetheless, the impact of the new system was dramatic, and in many cases, just as debilitating, as it engendered waves of emigration, unemployment, and poverty.<sup>124</sup> Pensioners, government officials, engineers, and factory workers suddenly found themselves in dire economic straits.

In the aftermath of independence, the existing command economy had become unsustainable, making some type of transformation inevitable. With little debate, capitalism replaced collectivism, causing economic decision-making to shift from the state to the market. Acquiring personal possessions became a controlling motivation, particularly as pent-up demand from the shortages of the Soviet era coincided with the flood of imports from other countries.

Kazakh culture needed to be reconciled with a new set of values, which would be consonant with a market economy.<sup>125</sup> Kazakhs, however, received little preparation and lacked a system of values suited for the new economic order. Materialism replaced collectivism. Contracts supplanted family ties, at least in the commercial context. Kazakhs had to confront the need for

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<sup>124</sup> See *infra* notes 125 and 126.

<sup>125</sup> Nomads in Mongolia were also subjected to mandatory collectivization. The process was not, however, as complete as in Kazakhstan. Initial efforts to collectivize had generated resistance, including the slaughtering of herds. Rather than proceed, as had been the case in Kazakhstan, the pace slowed dramatically. Collectivization was not completed until the 1950s. Even then, a substantial portion of the herds remained in private hands. See Robin Mearns, *Community, Collective Action and Common Grazing: The Case of Post-Socialist Mongolia*, 3 J. DEVELOPMENTAL STUD. 297 (1997) (noting that 32% of herds were in private hands in 1991). Herding also remained disproportionately important to the economy, with 43% of the population engaging in the activity in 1991. See *id.* Seventy-nine percent of the country's land was devoted to pasture, which is "probably the largest area of common grazing in the world." *Id.* The *khot ail*, or nomadic herding camp, which was the basic unit of live stock production, changed little before and after collectivization. Government policies did reduce herder mobility and weaken cooperative relations.

When Mongolia began to unravel the command economy, herding activity increased. Herds were rapidly privatized, with 90% in private hands by 1994. See *id.* With some in urban areas receiving allotments, the number of herders following decollectivization actually increased. In addition, various stationary workers on the collective were increasingly turning to herding. See *id.* As the role of the state declined with privatization, the *khot ail* became more important as an organizational unit, and cooperation among herders became more prevalent.

entrepreneurial behavior, despite an absence of mercantile traditions.<sup>126</sup>

As nomads, Kazakhs had operated within an economic system that accepted private ownership of herds and communal ownership of land. With mobility as the goal, material possessions were kept to a minimum. Neither nomadic nor Soviet culture prepared them for an avaricious system based on individual self-interest and the accumulation of personal wealth.

### 3.1. *Economic Crisis*

The most immediate consequence of independence was economic havoc. Inefficient, over-centralized, and in the process of losing guaranteed markets, the country's economy seized and shrank, contracting by 11% in 1992, 15.6% in 1993, 18.8% in 1994, and 8.9% in 1995.<sup>127</sup> Devastating inflation struck the country and the rate exceeded 2000% in 1993, and 1000% in 1994.<sup>128</sup> The first positive growth only occurred in 1996, five years after independence.<sup>129</sup>

Kazakhstan owned the assets that happened to be within its borders when the Soviet Union dissolved. Designed for the benefit of the entire Soviet Union, Kazakhstan found itself inextricably tied to the Russian economy and Russian markets. The pieces resulted in a misshapen economy. A country rich in natural resources, Kazakhstan nonetheless found itself with inadequate production and refinement capacity and was forced to import energy.<sup>130</sup>

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<sup>126</sup> This could be contrasted with the experience of the Uzbeks, who had a more mercantile tradition.

<sup>127</sup> By some estimates, Gross Domestic Product ("GDP") fell by 40% over the period. See *Sovereign Report: Kazakhstan*, IBCA LIMITED, Nov. 1996 [hereinafter *Sovereign Report*]. No one would deny the severe economic contraction that occurred in the early 1990s. At the same time, however, official statistics tended to underestimate development in the black and gray markets, suggesting that matters were not quite as bad.

<sup>128</sup> In 1994, the inflation rate was 1,258%. See *Kazakhstan: 1996*, BUS. INTELLIGENCE REP. WORLD INFO., Oct. 1996, available in LEXIS, News Group File.

<sup>129</sup> Moreover, GDP growth in 1996 was one percent, enough to demonstrate an end to the economy's contraction but not enough to attest to a turn around. See *Sovereign Report*, *supra* note 127.

<sup>130</sup> See, e.g., *Uzbekistan Agrees to Supply Kazakh City with Gas*, BBC SUMMARY OF WORLD BROADCASTS, Jan. 9, 1998, available in LEXIS, News Group File. Kazakhstan produced large amounts of grain and other

Those on fixed incomes (particularly the retired) watched their purchasing power disappear. Moreover, the government had difficulty paying even those small pensions.<sup>131</sup> Companies confronted a cash crisis. They had the choice of ceasing production or continuing to sell goods, but with marginal prospects of payment. The banking system rested on the edge of insolvency.<sup>132</sup> No internal system for generating capital existed. Most people, particularly those in rural areas, remained poor, maintaining a subsistent existence.

Some degree of economic decline was inevitable following independence. Industry no longer could produce in accordance with the quantitative demands of central planners, and it now had to meet the qualitative needs of the market. Invariably, this meant a decline in production as quality replaced quantity in overall importance. At the same time, Kazakhstan's economy needed to reorient itself away from Russia. Nonetheless, the steep decline was not inevitable; other countries in Central Asia suffered less.<sup>133</sup>

The news was not entirely bleak. In many respects, Kazakhstan emerged in an economically advantageous position. The country had a number of obvious strengths. Despite a disastrous harvest in 1995 and inadequate resources devoted to

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agricultural products. The country, however, had a woefully underdeveloped food processing industry. Similarly, the location of the country's three refineries (Atirau, Paulodar, and Shymkent) meant that two of them could not be used to refine significant quantities of domestically produced crude. As a result, Kazakhstan had to import crude from Russia for these refineries to meet its needs. See Mikhail Alexandrov, *Russian-Kazakh Contradictions on the Caspian Sea Legal Status* (visited Dec. 14, 1998) <<http://www.arts.unimelb.edu.au/dept/russcent/bulfeb98.htm>>.

<sup>131</sup> See *Kazakhstan: Improvements in Kazakh Economy in June Offset by Debt Crisis*, BBC SUMMARY OF WORLD BROADCASTS, July 21, 1995, available in LEXIS, News Group File; *Kazakhstan: Kazakh Leader Orders Government to Pay Off Wage, Pension Arrears*, BBC SUMMARY OF WORLD BROADCASTS, May 23, 1996, available in LEXIS, News Group File.

<sup>132</sup> See Douglas Busvine, *Judgement Day Looms for Struggling Kazakh Banks*, REUTER'S FINANCIAL SERVICE, July 10, 1996, available in LEXIS, News Group File.

<sup>133</sup> Uzbekistan's economy probably contracted the least, yet it came at a high price. Although it was overly dependent upon cotton as the principal export, the country was largely able to maintain production and to find markets for its output. Nonetheless, the cotton mono-culture caused great environmental damage during Soviet times, as the Aral Sea region illustrates. Continued reliance on cotton, therefore, likely constitutes a continuation of the adverse environmental consequences.

mechanization and fertilizers, Kazakhstan represented one of the world's largest grain producers.<sup>134</sup> The country raised enough grain to generate substantial exports. A legacy of the Soviet era, the country also had a high literacy rate, suggesting a well-educated, low cost work force.

Most noticeably, however, was the wealth in natural resources. In the Soviet era, the country produced 20% of the country's coal.<sup>135</sup> Kazakhstan ranked fourth in gold reserves, behind only South Africa, Russia and the United States.<sup>136</sup> It had as much copper as Chile, and some of the world's largest deposits of lead and zinc.<sup>137</sup> Most significantly, however, Kazakhstan contained prodigious amounts of untapped oil and gas. With systematic exploration just beginning, the quantity of the total reserves was uncertain. Nonetheless, it was clear that the total would be enormous.

The potential existed for the transformation of Kazakhstan into an island of prosperity in Central Asia. Such a transformation would both enhance its regional position and provide an environment in which Kazakh culture could thrive. For Kazakhstan, the issue was how to cast off the inefficient Soviet system and begin to take advantage of its natural advantages and wealth.

### 3.2. *Economic Transformation*

Economic transformation had to occur. Moreover, some amount of privatization was inevitable.<sup>138</sup> The government lacked the resources to retain ownership of all economic assets. Privatization, if nothing else, would reduce the continued drain on the treasury caused by these money-losing businesses. In addition, some portion of state-owned assets could be returned to the population as a whole, a symbolic reversal of the excesses of collectivization and the nationalization of the means of

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<sup>134</sup> See *Kazakhstan: 1996*, *supra* note 97.

<sup>135</sup> See *Kazakhstan: The Geology and Reserves*, APS REV. OIL MARKET TRENDS, July 20, 1998, available in LEXIS, News Group File.

<sup>136</sup> See *Kazakhstan: 1996*, *supra* note 97.

<sup>137</sup> See Gregory Andrusz, *Kazakhstan*, JANE'S INTELLIGENCE REVIEW, April 1, 1993, at 174.

<sup>138</sup> For a discussion of the privatization process, see YELENA KALYUZHNOVA, *THE KAZAKHSTANI ECONOMY: INDEPENDENCE AND TRANSITION* 69-91 (1998).

production.

Privatization began contemporaneously with independence in 1991. The government created a State Committee on Privatization ("Gos Kom Imevshestva" or "GKI") and gave it responsibility for disposing of state-owned businesses. Officially referred to as the Program of Denationalization and Privatization, but more informally called "spontaneous privatization,"<sup>139</sup> the early efforts were unsystematic and nontransparent.<sup>140</sup> They generally involved transfers of small or medium sized businesses to insiders (managers and employees), although the government often retained a minority interest.<sup>141</sup>

Typically on preferential terms, the transactions neither involved competitive bids, nor were open to foreign purchasers.<sup>142</sup> Companies were largely self-selected. Thus, while privatization had occurred, "few [of the companies] were of substantial size; commonly only a minority share was transferred; very few sales were competitive, and most carried highly beneficial terms; and the recipients were almost exclusively the employee collectives and managers."<sup>143</sup>

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<sup>139</sup> See, e.g., The Program of Privatization and Restructuring of the State Property in the Republic of Kazakhstan in 1996-1998, Presidential Decree No. 246, Feb. 27, 1996, Resolution of the Government of the Republic of Kazakhstan <<http://www.kazecon.kz/stockinfo/law/law%2Deng/proglsen.htm>> (referring to first phase of privatization as "Program of Denationalization and Privatization").

<sup>140</sup> In general, spontaneous privatization involved government-owned businesses that formed joint stock companies ("JSCs") and distributed shares to employees and management. Examples included Merei JSC (furniture), Kyz-Zhibek JSC (textiles), and Rakhat JSC (candy). Early efforts of spontaneous privatization traditionally involved transfers of shares to employee collectives, with the government often retaining some of the shares. Rakhat Candy Factory, for example, privatized during this early period. A fixture among Almaty's candy shops, the company's shares were owned primarily by employees. See N. Tashev, *They Bought It at Last*, SOVDATA DIALINE-BIZEKON NEWS, Aug. 14, 1991, at 1; Zhibek: Sales (visited Dec. 14, 1998) <<http://www.kazecon.kz/StockScripts/sales.idc?par=220>>; Rakhat: Company Information (visited Dec. 14, 1998) <<http://www.kazecon.kz/StockScripts/getinfo.idc?kod=1575>> [hereinafter Rakhat].

<sup>141</sup> See International Monetary Fund, Kazakhstan: Recent Economic Developments, International Monetary Fund Staff Country Report No. 96/22, March 1996, at 12 n.2 [hereinafter IMF Staff Report].

<sup>142</sup> See INTERNATIONAL MONETARY FUND, IMF ECONOMIC REVIEWS: KAZAKHSTAN 1994 11 (1995) [hereinafter IMF ECONOMIC REVIEWS].

<sup>143</sup> *Staff Appraisal Report, Republic of Kazakhstan: Financial and Enterprises Development Project*, at 5, World Bank Report No. 13553-KZ (March 29, 1995) [hereinafter World Bank Report].



In the beginning, local officials in the oblasts, who were responsible for actual implementation, had few incentives to support privatization. They received no funds from the sales and lost control over the assets. Managers of most companies also had little to gain.<sup>144</sup> They received no funds and were given, at best, a minority interest in the company, often in the form of nonvoting shares. Managers, therefore, preferred government ownership over private ownership and the demands of these shareholders for a return on their investment.

With more than 7,000 enterprises privatized by 1993, the total sounded deceptively impressive.<sup>145</sup> It represented only a small part of Kazakhstan's industrial base. Moreover, the legal regime was inadequate, and companies still owned their social assets. Nor did the privatization approach generate the expected results. In general, the distribution of shares to employees did not seem to significantly improve the operations of these companies.<sup>146</sup>

Sustained, systematic efforts at privatization only began in 1993. The Second National Program of Denationalization and Privatization was promulgated on March 3, 1993. In setting out the scheme, the program divided businesses slated for sale not on a functional basis, but rather, by the number of employees. Divided into three segments, the process would include small-scale privatization (asset sales and businesses with less than 200 employees), mass privatization (enterprises with between 200 and 5,000 employees, with strategic industries omitted), and case-by-case privatization of large and strategic enterprises.<sup>147</sup>

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<sup>144</sup> The privatization ministry had offices in all of the oblasts. These offices had an inventory of property and were responsible for selling assets within their region. In many cases, local offices were headed by officials with regional loyalties, particularly to oblast governors. With privatization essentially reducing the control of regional governments and, at least in the early years, entailing few financial benefits, these officials were in a position to and often did obstruct the pace of the dispositions. In the early years of the privatization process, all funds from the sales went to the central government in Almaty. Ultimately, proceeds from auctions were divided between the oblast and national governments. Once the regions had a financial stake in the privatization, their support increased.

<sup>145</sup> See World Bank Report, *supra* note 143, at 5.

<sup>146</sup> This represents more a perception than an empirical observation. Nonetheless, a number of companies that had privatized spontaneously were, by 1997, in trouble. Rakhat, the candy company, was one. See Rakhat, *supra* note 140.

<sup>147</sup> See World Bank Report, *supra* note 143, at 5.

The program was the first significant attempt to reduce the government's stake in the economy. The process, however, lacked coherency. Assets were scheduled for privatization in a haphazard process. Little was done to prepare the economy for the post-privatization environment. Onerous licensing and approval requirements were imposed; graft and corruption were common.

The process also suffered from political procrastination. Privatization involved the reorganization of state-owned monopolies into smaller, more salable units. The government, however, was often slow to end the monopolies, particularly in industries deemed politically sensitive.

### 3.3. *Small Scale Privatization*

Small-scale privatization entailed the sale of modest-sized businesses for cash.<sup>148</sup> For example, those wanting to start a store, restaurant, or nightclub or those wanting to operate a small group of delivery trucks, could purchase formerly government-owned assets in a small-scale auction. Some of the businesses were organized as joint stock companies, particularly warehouses and trucking companies. In those circumstances, purchasers acquired shares. Most businesses or assets, however, were sold outright as property.

Payment could be in the form of cash or housing coupons.<sup>149</sup> From January 1994 through September 1995, approximately 800 auctions were held, involving the sale of about 9,000 small, mostly retail and service outlets; this number increased to 13,000 by 1996.<sup>150</sup> To aid small businesses, the government also gave

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<sup>148</sup> Assets sold in small-scale privatization were initially determined on the basis of the number of employees. A business with less than 200 employees fell within the terms of small-scale privatization. See Emil Burkhan, *The Cart Before the Horse: Anticipatory Securities Regulation in Kazakhstan*, 22 BROOK. J. INT'L L. 535, n.22 (1997). Some businesses were auctioned directly as assets and some were organized as joint stock companies and auctioned as shares. Later, the definition of small-scale privatization would include only "assets" with 200 or fewer employees, with all shares sold at unified auctions under the mass privatization program.

<sup>149</sup> See World Bank Report, *supra* note 143, at 6. Up to half of the purchase price of assets sold during small-scale privatization could be paid with housing coupons. The right to use housing coupons represented a later addition designed to absorb excess coupons from the housing privatization process.

<sup>150</sup> See *Transition Indicators for Kazakhstan*, 19 EBRD TRANSITION REP.

priority to the auctioning of trucks and trucking firms.<sup>151</sup>

In the beginning, the auctions did not work as expected. Assets scheduled for auction were assigned a minimum value. The methodology used to set the price often overstated actual value. If the assets did not sell, the price would be reduced once by a modest 15% and then rescheduled for a future auction. Low quality assets often appeared at auctions on multiple occasions, with no bidders willing to pay the minimum price.<sup>152</sup>

Eventually, the rules would change, particularly the elimination of the minimum bid price. Moreover, assets could be auctioned only over a six-month period, removing the problem of valueless assets constantly reappearing at auctions.<sup>153</sup> Without the minimum price requirement, some complained that the government sold the country's assets "for kopeks." In fact, elimination of artificial price floors facilitated disposal of assets, particularly those of lower quality.

After overcoming some early logistical problems, small-scale privatization progressed rapidly. Properly implemented, small-scale privatization had the potential to create a class of entrepreneurs who would have an immediate stake in the continued economic development of the country. They could acquire shops and small businesses. Funds could be obtained by pooling resources, something viable for Kazakhs given their close and extended family structure.

While small-scale privatization did place certain types of assets, particularly retail outlets, into the hands of individual owners, it did not immediately generate a renaissance in small business ownership. Retail outlets were sold selectively, with bread shops and pharmacies privatized only later. Moreover, the onerous requirements for licensing impeded business formation and were an invitation to corruption.

Moreover, those purchasing small businesses through the

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176, Nov. 3, 1997.

<sup>151</sup> See World Bank Report, *supra* note 143, at 6. According to one report, approximately 11,000 of the 14,634 enterprises scheduled for small-scale privatization had been sold by the end of July 1996. They included 5,262 involved in trading, 2,681 in consumer service, 1,653 in catering, 842 gas stations, 456 pharmacies, and 140 warehouses. See *Sovereign Report*, *supra* note 127, at 12.

<sup>152</sup> See IMF Staff Report, *supra* note 141, at 12 (noting that as a result of these problems, about half of the assets went unsold).

<sup>153</sup> See *Transition Indicators for Kazakhstan*, *supra* note 150.

privatization process suffered particular disadvantages. With the government aware of the sale, they were susceptible to government pressure, regulation and corruption. Businesses formed not from privatized assets would be harder to find and could operate in the black and gray economies, with less government interference.

The shops also had to have products to sell and people with the income to purchase them; both were problems given the weak economy of Kazakhstan. New owners required training. Most importantly, they needed funding. Funds were necessary to improve the product mix, modernize or update facilities and engage in basic activities such as advertising.

Finally, sales could have been facilitated by allowing individuals to use privatization coupons to buy the assets.<sup>154</sup> Doing so would have minimized the initial cash investment, allowing buyers to use funds for inventory and post-privatization improvements. In a cash-poor society, anything that reduced the need to expend funds to buy assets would have been beneficial. Moreover, since coupons were not transferable, groups of individuals were necessary, perhaps encouraging purchases by family units. Finally, since those in rural areas received more coupons, they had an advantage in the purchasing process.

### 3.4. *Mass Privatization*

In the entire process of disposing of state-owned property, mass privatization held the greatest promise, yet proved the most disappointing. In some ways, it was a success; assets of little value were given away, ceasing to be a drain on the national budget. At the same time, however, the process promised to return national wealth to the citizens of Kazakhstan. On this score, the process raised, then dashed, expectations, souring many on the privatization process.

Privatization often contemplated that some property owned by the state would be distributed to the people of Kazakhstan. The idea was common enough throughout the former Soviet Union. In Russia, individuals received vouchers.<sup>155</sup> They could

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<sup>154</sup> In small-scale privatization, they could use housing coupons. See IMF Staff Report, *supra* note 141, at 12, n.3. Privatization coupons were not, however, allowed.

<sup>155</sup> See J. Robert Brown, Jr., *Of Brokers, Banks and the Case for Regulatory Intervention in the Russian Securities Markets*, 32 STAN. J. INT'L L. 185, 198

sell them or could participate in auctions, buying shares of companies undergoing privatization.<sup>156</sup> Other countries in the former Soviet Union took similar steps, although with wide variations in the mechanics.

Distributing property to the population as a whole had a number of possible justifications. First, having promoted and enforced collective ownership, the government had an obligation to acknowledge these interests by giving everyone a share of state property.<sup>157</sup> Additionally, the give-backs could constitute a recognition of the excesses of enforced collectivization.

Second, the process had some potential to increase support for privatization. Initially, the pain of privatization was far more apparent than the benefits. Countries in the former Soviet Union saw dramatic declines in production, negative growth in their economies, and severe inflation, something that had a particularly painful impact on individuals with fixed incomes, such as pensioners. In turn, the benefits were not particularly apparent, except perhaps for the small group of people who benefited handsomely from the economic dislocation.

Distribution of property, whether state-owned enterprises or apartments, gave people in these economies an immediate benefit and, to the extent they retained their interests, a stake in the country's economic recovery. To the extent that companies became more competitive and paid dividends, the new owners would benefit. They, therefore, had greater reason to support continued efforts to reform the economy and to improve the competitive condition of privatized businesses.

A third, less egalitarian reason existed, however, for the distribution of assets to the population as a whole. Some assets held by the state had little or no value. They would be difficult to sell at auctions. Simply giving them away represented the most expedient method of transfer. Distribution of this low-value property through coupon or voucher auctions could provide all

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(1996).

<sup>156</sup> See *id.*

<sup>157</sup> See, e.g., Georgi G. Angelov, *Legal Framework of Privatization in Russia*, 2 MINN. J. GLOBAL TRADE 501, 514 (1993) ("Given the historical background of Russia, the mass coercive collectivization following the October Revolution, the forcefully propagated ideas of equality among citizens and strong communist opposition, it is not surprising that Russia adopted the relatively egalitarian model [of voucher privatization].").

of the appearance of fairness while, in reality, solving a significant problem of the government.

Finally, the process could have a salutary impact on the post-privatization economy. In particular, the economies needed to promote the development of capital markets, a critical source of funding for private businesses. Coupons or vouchers, if transferable, provided an impetus for market development. Similarly, schemes to encourage contribution of coupons into investment funds could have a salutary effect on market development. These entities aggregated large numbers of coupons and used them to buy big blocks of privatizing companies. The presence of institutional investors, if done properly, could stimulate necessary changes in management and secondary market activity.

Whatever the justification, a coupon privatization program inevitably required resolution of a number of practical and political issues. Individual investors would generally receive only small ownership interests in return for their vouchers or coupons. Large numbers of small investors would have little ability to organize and influence the behavior of management. One solution was simply to allow investors to sell their coupons or vouchers. In that way, other investors could accumulate enough to buy substantial stakes in companies.<sup>158</sup>

Alternatively, small investors could be funneled into some type of mandatory scheme designed to aggregate their interests. This generally took the form of investment funds, with investors required to select a fund and deposit their coupons. The largest funds would accumulate large numbers of coupons and buy significant sized blocks of shares of companies undergoing privatization. The position would allow them to influence management and induce profit-generating behavior. In Kazakhstan, the issues were resolved by prohibiting transfer of the coupons and requiring their contribution to an investment fund.

The other issue was political. Coupons could be distributed equally or could be used in an attempt to redress historical mistreatment or cultural biases. In the case of Kazakhstan, no

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<sup>158</sup> In Russia, for example, vouchers were transferable bearer instruments. See J. Robert Brown, Jr., *Order From Disorder: The Development of the Russian Securities Markets*, 15 U. PA. J. INT'L BUS. L. 509, 514-17 (1995).

overt effort was made to distinguish among nationalities. A distinction was made, however, between rural and urban populations, with those in the city receiving a smaller number of coupons. Citizens in urban areas received 100 coupons; those in rural areas obtained 120.<sup>159</sup> The distinction may have been in recognition that most rural Kazakhstanis had suffered more as a result of enforced collectivization.<sup>160</sup> More likely, however, the difference was designed to benefit Kazakhs who still lived predominately in rural areas.

In Kazakhstan, the government issued a total of approximately 1.7 billion coupons, with a total of 1.1 billion eventually redeemed.<sup>161</sup> Coupons were dispensed through the only real national distribution system, the offices of Narodny Bank, the successor to the Soviet savings bank, Sberbank. The Bank also had primary responsibility for collecting coupons contributed to funds.<sup>162</sup>

To prevent holders from selling their rights to government property, the coupons were made nontransferable. The decision was apparently designed to prevent ordinary Kazakhstanis from transferring "their portion of national property in exchange for a bottle of vodka."<sup>163</sup> Nor could they use the coupons at privatization auctions. Instead, coupons could only be

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<sup>159</sup> The coupons were distributed in the form of booklets, with one certificate representing ten coupons. As a result, ten coupons represented the minimum denomination for investment into a fund. See Copy of Coupon and Fund Certificate (on file with author).

<sup>160</sup> It may have been an attempt to rectify the capital imbalance between the poorer, more rural Kazakhs, and the richer, more urban Russians. See The Center for Political and Strategic Studies (visited Dec. 14, 1998) <<http://www.cpss.org/casiabk/chap12.txt>>.

<sup>161</sup> Eighty-five percent of all citizens invested at least some of their coupons, while 67% of all coupons were actually invested. The discrepancy arose in part because of limitations on investment. For the first six months of the coupon privatization program, no more than 20% of the coupons could be invested. Some holders, therefore, apparently invested during the early stages of privatization but never invested the remaining share of their coupons. See *id.*

<sup>162</sup> Some coupons were contributed directly to the funds. Most, however, were collected by Narodny Bank on behalf of the funds.

<sup>163</sup> See National Association of Professional Participants of Securities Markets, *Coupon Privatisation Experience and Results* (visited Oct. 11, 1998) <<http://www.kazecon.kz/Nami/Eng/nami21.htm>> [hereinafter *Coupon Privatisation*].

contributed to privatization investment funds ("PIFs").<sup>164</sup> PIFs could accumulate enough coupons to acquire large stakes in companies, thereby gaining the power to influence their management.

With no right to sell their interest and no right to participate directly in auctions, small investors depended upon the actions of the PIFs for any profits. Investors would only realize a return at some indeterminate time in the future when their status with the PIF was made certain, the fund converted to an investment company, and it began paying dividends. To the extent PIFs disappeared or liquidated before this occurred, coupon holders would never see any value for their investment. Even if PIFs survived, profits depended upon the quality of the assets they acquired in the privatization process, the ability to purchase enough shares to influence corporate behavior, and the honesty and integrity of those operating the funds. Problems existed in each area.<sup>165</sup>

The process of contributing coupons to funds generated a logistical nightmare. With the distribution and collection system initially not computerized and Narodny Bank not compensated by the government for the activity, shareholder records were incomplete and often full of errors. The government was forced to take cumbersome steps of dubious value to remedy the situation.<sup>166</sup> The funds, therefore, began with inaccurate lists of shareholders.<sup>167</sup> As a result, many coupon holders would

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<sup>164</sup> In addition to privatization coupons, some funds accepted housing coupons. A single fund, the Almaty Property Fund accepted only housing coupons. Unlike most of the other funds, the Property Fund even issued receipts and, in 1996, began paying dividends. See Interview with Shareholder of Fund (May 1997) (on file with author). Housing coupons could be used to purchase assets sold in small-scale privatization.

<sup>165</sup> Some of the problems may have been with design. Others, however, arose out of the lack of support for the process within the government of Kazakhstan. GKI in Almaty depended upon information received from its regional offices in determining what companies to sell. Regions received no financial benefit from the sale (they were sold for coupons, not cash) and had little incentive to support the program. In addition, GKI in Almaty seemed less than rigorous in ensuring an aggressive coupon privatization plan.

<sup>166</sup> In the summer of 1996, the privatization ministry devised a plan to allow those who submitted coupons to fill out a form and learn the status of their investment. The forms were placed in post offices. The forms could also give regulators notice of errors in the shareholder registry.

<sup>167</sup> Funds had received lists from the Information Check Centers, which in



ultimately discover that, given the inaccuracies in the lists, their ownership interest had simply “disappeared.”<sup>168</sup>

The most severe problem with coupon privatization, however, related to the quality of the companies offered to the PIFs and the resulting quality of their portfolios. Mass privatization involved the disposition of medium-sized businesses (generally those with more than 200 employees but less than 5,000).<sup>169</sup> The quality of companies offered was uneven and often did not meet the requirements specified in the mass privatization program.<sup>170</sup> Of the approximately 1,700 companies sold at auction, many were small (with fewer than 100 employees), and from less important segments of the economy.<sup>171</sup>

PIFs could not obtain adequate information about the nature of the businesses sold at auctions. Audited financial statements based on international standards did not exist. The requirement that privatizing companies draft and file an emission prospectus was often ignored.<sup>172</sup>

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turn received information from Narodny Bank. The only way to obtain accurate records, therefore, was to recount the coupons still held by Narodny Bank, a time consuming and laborious process. Even then, this did not even take into account that accurate information (addresses, names, etc.) could have changed in the intervening period between collection of the coupons by the funds and the issuance of shares.

<sup>168</sup> They did not even receive a receipt reflecting their ownership interest. Officials at Narodny Bank would stamp the coupon books to show the fund that would receive the coupons. The stamp was the only record given to coupon holders of their ownership interest.

<sup>169</sup> See IMF Staff Report, *supra* note 141, at 13, n.1.

<sup>170</sup> Of the 1,700 companies sold, almost one-third (539) were construction or repair companies. See *Coupon Privatisation*, *supra* note 163; see also Usef Duberman, RK State Privatisation Committee Deputy Chairman, *Coupon Privatisation Experience and Results*, NATIONAL ASSOCIATION OF PROFESSIONAL PARTICIPANTS OF SECURITIES MARKETS (visited Dec. 14, 1998) <<http://www.Kazecon.kz/Nami/Eng/nami2-1.htm>>.

<sup>171</sup> See *Coupon Privatisation*, *supra* note 163. Of the approximately 1700 companies sold, 583 had less than 100 employees; 922 had from 100 to 1000. See *id.* Government officials often explained that, while mass privatization applied to companies with at least 200 employees, some businesses fell under that number because of employee attrition and other natural explanations. Given the high number of small companies sold during the coupon auction process, however, it seemed clear that this explanation was insufficient and, more likely, GKI deliberately sold a number of very small companies in order to produce a more impressive total. See Duberman, *supra* note 170.

<sup>172</sup> See *id.* Of the 1700 or so companies privatized, 919 did not file the registration statements. Moreover, of the remaining 769 that did, the prospectuses provided little useful information. Even those filed were of low

The PIFs also could not use coupons in the most effective manner. The government never developed or published a master list of companies that would be sold at auctions.<sup>173</sup> As a result, PIFs could not engage in advanced planning concerning which shares to purchase. To the extent that coupons were used early, there might not be enough later when "good" companies became available. The approach encouraged hoarding, which partially explained why PIFs had an inventory of coupons at the end of the auction process.

In the end, coupon privatization resulted in the creation of 170 PIFs.<sup>174</sup> The largest, in terms of the coupons collected, included Butya, Auyl, Altynden, Kuat-Capital, and Natsionalniy. Nonetheless, most were small and would probably not survive in a deregulated market.<sup>175</sup> They were also cash poor.<sup>176</sup> They could only sell shares for coupons, not cash.<sup>177</sup> They could not issue shares to the public until companies in their portfolio registered their shares with the National Securities Commission, which was a slow process, and they had converted to ordinary investment companies. By the summer of 1997, no investment fund had yet converted or conducted a public offering of shares.<sup>178</sup>

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quality. That may have resulted from a deliberate decision to disguise information. It is just as likely, however, that it resulted from the difficulties of inexperienced officials attempting to meet new and complex disclosure requirements. Moreover, given the need to privatize, government officials were not about to delay the sale of shares because of inadequacies in the disclosure. Companies did not have to worry about an exacting government review process.

<sup>173</sup> Lists were periodically developed. Companies would often object to their inclusion in the privatization program, with good reason. Companies owned by the government were subject to very little (if any) effective oversight. Privatization meant that managers would have to deal with outside investors ("PIFs") and would not have the same latitude to operate the business as they saw fit.

<sup>174</sup> See *infra* note 184.

<sup>175</sup> Only a small number of the funds had collected more than 20 million coupons. Most had less than one million. See National Association of Professional Participants in Securities Markets, *Holding Companies and Mass Privatization*, 1 INFO. BULL. 1 (1995).

<sup>176</sup> To pay expenses, funds had to use contributions made by founders and income generated from the sale of assets. As cash paid by founders dissipated, the latter approach was the only available avenue. Many funds, therefore, were essentially self-liquidating.

<sup>177</sup> Some funds also accepted housing coupons. These were funds that purchased assets in small-scale privatization. See *supra* note 149.

<sup>178</sup> Perhaps the biggest problem concerned the conversion of the funds to

They also were not aggressively restructuring Kazakhstan industry. The privatization process had resulted in the sale of at least 51% of each company's shares to the PIFs, with the government typically retaining the remaining 39% and employees receiving a 10% block of nonvoting shares.<sup>179</sup> Individual PIFs, however, could only acquire 20% of a company, a percentage subsequently raised to 31%, and could put no more than 5% of their assets into a single company.<sup>180</sup> Moreover, a fund could only acquire up to 10% of a company's shares at any one auction.<sup>181</sup>

The result was that individual funds tended to have relatively small blocks of shares, making the exercise of control more difficult.<sup>182</sup> They had not developed into active institutions

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ordinary investment companies. First, having been in existence with little or no outside supervision for several years, the suspicion existed that many of the PIFs had already sold their best assets for cash to fund ongoing operations. Second, they had generally been controlled by a small group of founders who had contributed capital and received shares. With conversion, coupon holders would become shareholders, depriving founders of control. Possibilities existed, therefore, that founders would avoid the result by liquidating the fund and finding ways of transferring most of the value of the funds to themselves. They could, for example, treat the initial contribution as a loan and seek both principal and interest as repayment.

<sup>179</sup> Matters were not always that straightforward. Sometimes, the government did not have a 51% block, since shares had already been sold in earlier stages of privatization. The size of the government block of shares, therefore, tended to vary. In general, however, GKI did attempt to auction a majority of shares to the funds.

<sup>180</sup> See Law on Investment Funds in the Republic of Kazakhstan, Mar. 16, 1997, art. 26, Decree No. 1290 [hereinafter Law on Investment Funds]. In subsequent legislation regulation, investment companies retained the 5% limitation. See *id.* art. 18: Manager's Compensation.

<sup>181</sup> See *Coupon Privatisation*, *supra* note 163. Improbably, the law also required portfolio diversification. See Law on Investment Funds, art. 27 (requiring that a fund seek to lower risks by "diversifying investments"). Diversification represented a requirement common in the west but highly impractical in the emerging markets of the former Soviet Union. Owning small percentages of a large number of diverse companies would essentially mean that the fund had no ability to influence management. The tradition was that management did not restructure and aggressively seek to pay dividends until pressured to do so by powerful outside investors. The more appropriate approach, therefore, was to try to build large blocks of shares in a small number of companies and to use the leverage to influence management. See *Brown*, *supra* note 158, 527-34, n.85.

<sup>182</sup> Even worse, the system largely meant that management was not supervised by owners. The government, with its block of shares, tended to remain inactive in matters of corporate governance. Employee shareholders had no voting rights. The PIFs, therefore, represented the only real group of investors that could exercise control over management.

capable of influencing corporate behavior. Nor had they become safer institutions that would encourage smaller investors to invest.<sup>183</sup>

Mass privatization was poorly structured. It made little attempt to meet the particular needs of Kazakhs. The idea of forcing individuals into funds may have had some compelling logic at the inception of the mass privatization program. The approach bought time, requiring Kazakhstan citizens to hold their interests until the economy improved and their understanding of market dynamics increased.

The approach presupposed, however, that the time would be used to increase awareness of market related issues, something not generally done. By 1998, investors had seen no return on their investment. They had not been invited to shareholder meetings, given an abstract from the share registry, or been paid a dividend. Moreover, with funds likely to fail or liquidate, many investors were likely never to see any affirmative benefit from their coupon.<sup>184</sup>

### 3.5. *Case-by-Case Privatization*

In addition to mass and small-scale privatization, the process also provided for the disposition of state owned property on a case-by-case basis.<sup>185</sup> Large enterprises, with more than 5000 employees (although smaller companies were sometimes included), which played a "strategic role" in the economy, would

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<sup>183</sup> With the end of coupon auctions in 1996, the guise of returning wealth to the people of Kazakhstan ended. Mass privatization continued, but with the auctions for cash rather than coupons. Large numbers of coupons remained unused, suggesting a high level of public antipathy to the whole program. In 1996, 838 of the 1235 companies offered for sale in the mass privatization auctions were sold. The sales raised four billion tenge. See *Privatisation Update: Kazakhstan*, No. 8, Nov. 1997, <<http://www.kazekon.kz/Survey/CCF/Noveme97.htm>> [hereinafter *Privatisation Update*].

<sup>184</sup> The internet contains a list of 170 PIFs. See *Investment Privatization Funds* (visited Dec. 14, 1998) <<http://www.kazekon.kz/Nami/Eng/pif.htm>>. Despite prodigious efforts to find addresses for all of the funds, four had only a city listed. Another group had no phone numbers. The difficulty in finding the funds suggest that some have already liquidated or otherwise disappeared.

<sup>185</sup> See, e.g., Having Authority of Law of the President of the Republic of Kazakhstan, Concerning Privatisation, Edict N 2721, art. 7 (Dec. 23, 1995) (Kaz.) (providing for case-by-case privatization) [hereinafter Edict N 2721]; *id.*, art. 18 (requiring sellers in case-by-case privatization to provide buyers with environmental information).

be privatized on an individualized basis.<sup>186</sup> The approach essentially amounted to an ad hoc effort to dispose of the largest businesses one at a time.

The process involved the largest, most politically connected group of companies. They were often in no hurry to undergo privatization, preferring the lax hand of government ownership to the more rigorous demands of private owners. The disposition process was halting, with sales scheduled, then canceled, for seemingly inexplicable reasons.

Privatization could take place through the sale of shares, the sale of assets, or through the execution of management contracts. Initial efforts focused on cash purchases. Philip Morris and Coca-Cola used the avenue to establish strong positions in the country.<sup>187</sup> Daewoo purchased a 40% interest in Kazakhtelekom for \$100 million.<sup>188</sup> Ironically, the predilection for cash sales probably had the effect of limiting Russian penetration of the Kazakhstan market. Since most Russian companies were cash poor, they were not in a position to meet these terms and extend their tentacles into the country.<sup>189</sup>

The approach, however, quickly fell out of favor. Given the poor state of most large companies, the purchases required large up front payments, which were not always practical. The companies often had inefficient plants, outdated equipment and huge inter-corporate debts.<sup>190</sup> The purchases, therefore, carried

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<sup>186</sup> See IMF Staff Report, *supra* note 141, at 13. For a discussion of the case-by-case approach, see PETER REKVE ET AL., PRIVATISATION AND THE ROLE OF THE FOREIGN INVESTOR: A PILOT STUDY OF THE KAZAKHSTAN EXPERIENCE (Kazakhstan Institute of Management, Econ. and Strategic Research Working Paper No. 1/Occasional Paper No. 42, June 4-6, 1998).

<sup>187</sup> Philip Morris acquired 88% of Almaty Tobacco Company in late 1993 for \$300 million. *Kazakhstan: 1996, BUSINESS INTELLIGENCE REPORT WORLD OF INFORMATION*, Oct. 1996. Coca-Cola opened a bottling plant in Almaty in May 1996. See *id.* In 1994, RJ Reynolds Nabisco purchased a confectionery factory in Chimkent, a facility now used to manufacture candy and cigarettes. See *id.*

<sup>188</sup> See Dow Jones, *Daewoo Gets 40% Stake in Kazakhstan Company*, N.Y. TIMES, Apr. 30, 1997, § D, at 6.

<sup>189</sup> At the same time, the emphasis on cash had an egalitarian effect. In the spring of 1997, the Chinese National Oil Company paid \$325 million for a 60% interest in Aktobemunaigas. See *Privatisation Update*, *supra* note 183.

<sup>190</sup> See generally AIGUL AUBANOVA & MICHAEL MULLER, DISINTER-MEDIATION AND ARREARS: WHAT ARE THE PROBLEMS AND WHAT ARE THE SOLUTIONS? (Kazakhstan Institute of Management, Econ. and Strategic Research Working Paper No.3/Occasional Paper No. 44, June 4-6, 1998).

considerable risk, something that was often difficult to assess with the small amount of information available prior to the sale.

Due to the difficulties of selling assets for cash, management contracts became the preferred method of transfer, for a time. Managers received operating control and a portion of the profits for a specified period of time in return for capital infusions designed to reduce the debts of the enterprise and to modernize its facilities.<sup>191</sup> The companies subject to the agreements were typically large natural resource companies, with contracts awarded pursuant to non-competitive tenders<sup>192</sup> and a specified duration, usually five years.<sup>193</sup>

Management contracts did not, conceptually, involve a sale of the company.<sup>194</sup> The reality differed considerably from the theory. Although structured as contracts to manage, the expectation was clear that at least in some, if not in most cases, the manager would acquire permanent control of the enterprise.<sup>195</sup> The results were not, however, foregone. The contracts provided putative purchasers with a way out. After gaining control of the company, they would have a better opportunity to assess the risks associated with the investment. With the information, the purchaser could more accurately determine the value of a controlling interest.

Forty-one contracts were signed by the end of 1995, with 21 involving foreign firms.<sup>196</sup> The 1995 agreement signed by Japan

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<sup>191</sup> See *Objects Under Management Contracts* (Sept. 6 & 13, 1996) <<http://www.kazecon.kz/English/individ1.htm>>.

<sup>192</sup> See *\$3 Billion Oil Scandal*, FOCUS CENT. ASIA, Dec. 1995, at 9, 12. The system for awarding the contracts was done in a secretive, non-transparent environment.

<sup>193</sup> See Edict N 2721, art. 3-11.

<sup>194</sup> Gos Kom Imevshetva ("GKI"), the State Committee on Privatization created by the Kazakhstan government, had the authority to issue the contracts in Cabinet of Minister Resolution 716 (May 19, 1995).

<sup>195</sup> By 1997, control had passed to companies executing management contracts in a dozen cases. See *Transition Indicators for Kazakhstan*, *supra* note 150. In this sense, they resembled the loans for shares program in Russia. That program gave banks effective control over Russian companies in return for loans to the government. While the shares were only collateral, the bank could obtain permanent ownership if the loans were not repaid. Since the government was not expected to repay the amounts, the transaction was more of a purchase than a loan. See Brown, *supra* note 155, at 211.

<sup>196</sup> For a list of the 41 contracts, see *Objects Under Management Contracts*, *supra* note 191. Some, however, were canceled. A few of the more notable agreements included the transfer of Zhezkazgantsvetmet to Samsung and the

Chrome to manage Kazchrome illustrated how management contracts worked in practice. Formed in 1995 from an amalgamation of the Donskoy Chromium Mine and the Yermakovskiy and Aktyubinsk smelters, Kazchrome was the largest producer of chromium in the world. The contract to manage the company was given to Japan Chrome in 1995.

In return for the management contract, Japan Chrome agreed to meet the debt obligations of the company and provide necessary working capital in return for 2% of the Kazchrome's profits.<sup>197</sup> The arrangement, however, was more than a temporary device designed to improve management. Japan Chrome converted many of the loans extended to Kazchrome into equity and purchased shares in the open market. By early 1997, the management group owned more than 50% of the outstanding shares, with a large remaining block in the hands of the government.<sup>198</sup>

A third method of transfer in case-by-case privatization involved asset sales. Investors would acquire the assets of a company, shorn of the outstanding debts and accumulated liabilities. By 1996, asset sales had become the preferred method of disposition. Eleven of the seventeen companies sold under the case-by-case method were asset sales.<sup>199</sup>

### 3.6. Summary

By 1997, coupon auctions were a thing of the past; small-scale privatization had largely been completed.<sup>200</sup> Residual problems,

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contract by United Steel for the Karaganda Metallurgical Complex.

<sup>197</sup> See *Kazakh Ore Cuts Hit Russian Chrome Output*, METALS WEEK, Sept. 4, 1995, at 4.

<sup>198</sup> See Sujata Rao, *Trans-World Accused by Kazakhs of Abuse*, MOSCOW TIMES, Jan. 22, 1998, available in LEXIS, News Group File. Similarly, at one time, the aluminum refinery in Pavlodar, the only one in the country, was 90% owned by White Swan, Ltd., a company controlled by Trans-World-Metals Group in the UK. The refinery primarily supplied two smelters in Russia. See Richard Levine, *Kazakhstan Endowment*, MINING J., Sept. 12, 1997, at 85. Japan Chrome also owned two coal mines. See *id.* In October 1997, however, the government took back its 31.7% interest in Pavlodar, leaving Trans World with around 57%. See *Kazakhstan's Wealth*, MINING J., Nov. 14, 1997, at 21.

<sup>199</sup> See *Privatisation Update*, *supra* note 183.

<sup>200</sup> Most state monopolies had been broken up and the non-corporatized assets sold. In general, therefore, the distribution of assets had been completed. The only significant category concerned social assets such as medical facilities

such as the use of leases to avoid privatization, had been corrected.<sup>201</sup> One clear sign of the declining importance of the privatization program was the bureaucratic reorganization. The State Committee for the Management of Property and GKI both lost ministerial status in 1997, and were reduced to departments within the Ministry of Finance and eventually merged.<sup>202</sup> The days of a powerful privatization ministry were over.

Despite these efforts, a number of important and strategic industries remained in government hands.<sup>203</sup> By 1997, only about 35% of the country's GDP came from the private sector.<sup>204</sup> Highly public plans to privatize the largest, "blue chip" companies and stimulate a secondary market proved illusory. The list of companies scheduled for privatization continuously shifted, with no explanation given.<sup>205</sup> Time lines slipped. By the

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and educational institutions. By late 1996, sales of even these types of assets had begun. See Resolution of the Government of the Republic of Kazakhstan on the Program of Privatization and the Restructuring of the State Property in the Republic of Kazakhstan for 1996-1998, Decree No. 246, Feb. 27, 1996. (discussing sales of assets involving healthcare, public education, science and culture).

<sup>201</sup> Regional property committees would sometime lease property for lengthy periods, thereby receiving an income stream and also retaining ownership. A presidential decree, however, required long term lease holders to buy the property or it would be sold at auction.

<sup>202</sup> See *Privatisation Update*, *supra* note 183.

<sup>203</sup> By 1996, "only five" of the 180 enterprises with more than 5000 employees had been privatized. See *Transition Indicators for Kazakhstan*, *supra* note 150. These categories of industries included energy, oil & gas, metallurgy and mining, transport and communication and portions of the agroindustrial sector. See Decree No. 246, *supra* note 200.

<sup>204</sup> See *id.*

<sup>205</sup> The government announced "blue chip" privatization in December 1996. Initial sales were expected in the summer of that year. See Res. No. 1716 of the Government of Kazakhstan, Dec. 31, 1996, reprinted in <<http://www.kazecon.kz/English/tender4.htm>> (listing 32 companies subject to sale and another 24 companies expected to be sold in the future). Companies, however, were slow to embrace the approach, generally preferring government control (which meant little effective oversight) to private ownership. For whatever reason, the government did not apply the pressure necessary to accelerate the process. In June 1997, another decree listed the expected sales. The list involved a smaller number of companies and, in general, smaller blocks of shares. See Res. No. 936 of the Government of the Republic of Kazakhstan, June 6, 1997, reprinted in <<http://www.kazecon.kz/English/tender.htm>>; see also Res. No. 1588 of the Government of the Republic of Kazakhstan, Nov. 15, 1997, reprinted in <<http://www.kazecon.kz/English/tender.htm>> (amending Res. No. 936, *supra*, and designating the tender committee).



end of 1997, the sales still had not occurred.

The case-by-case method was prone to abuse. It was also slow. A deliberate process of privatization may have worked had the time been used to adequately prepare the enterprises for market. In fact, with little capital and marginal government oversight, the large companies continued to deteriorate. Despite legal requirements, they did not prepare financial statements meeting modern standards.

The approach also made development of the securities markets more difficult. In general, the approach attracted strategic partners, not passive investors looking for a place to put excess savings. By removing these companies from the public securities markets, the government effectively lowered the quality of companies available for investment. That made the decision of investors much more difficult and the markets far less attractive.

The approach raised other, broader, concerns. Much of the natural resource base of the country seemed increasingly owned by foreign investors.<sup>206</sup> Japan's post-war model showed that this was not inevitable. Japan financed its recovery through domestic sources of capital and loans from foreign banks, not by selling its industrial base at artificially low prices. In many respects, Kazakhstan traded title to the country's natural resources from one foreign owner (Russia) to another (the West).<sup>207</sup>

#### 4. CASE STUDY: FAIRNESS, EFFICIENCY AND THE BREAD INDUSTRY

An example of how privatization worked in practice and the interrelationship between small scale and mass privatization occurred in connection with the privatization of the grain and bread making industry. This industry seemed ripe to benefit from privatization and also seemed destined to promote small business ownership.

It would be difficult to find an industry of greater importance to the population of Kazakhstan than the grain industry. Bread constituted a daily presence on the dinner table and ranged from the traditional heavy black loaves (kirpich) to the round white lapshkas. In the 1970s, new equipment permitted long, thin

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<sup>206</sup> See *Ranked 13<sup>th</sup>: Kazakhstan*, MINING J., Oct. 4, 1996, at 85.

<sup>207</sup> See J. ROBERT BROWN JR., *OPENING JAPAN'S FINANCIAL MARKETS* 29-30 (1994).

loaves of French bread to make occasional appearances.<sup>208</sup> Moreover, with a wide network of shops, bread could be purchased fresh on a daily basis (except on Sundays).

Reform of the industry was critical. Given the ubiquitous nature of the industry in Kazakhstan, improvements in quality or selection would become immediately apparent. In addition, decontrolling grain prices, while perhaps raising the cost of bread, would benefit production. By providing additional financial incentives, collective farms would become more efficient, buying higher-grade seeds and fertilizers.<sup>209</sup>

At the same time, distribution of bread occurred through a network of retail stores, with at least one store located in every neighborhood. Given the existing demand, those acquiring the outlets had immediate opportunity to improve services and appeal to consumers, for example, through extended hours and increased product mix. In addition to gathering other types of bread products, the daily trip to the bread shop also provided a natural opportunity to purchase related products and groceries.

Nonetheless, matters proceeded slowly. It took more than four years before the government began serious efforts to privatize the industry. The delay was largely political. Concern existed that privatization would result in increased prices for bread, perhaps generating unrest. During the period of indecision, the government monopoly gradually eroded, but without the full benefits that would have inured had the entire industry been privatized.

Bread and grain were a big business in Kazakhstan. Particularly after the virgin lands scheme, the country had become a substantial producer of grain, with its output in 1990 ranking sixth in the world.<sup>210</sup> Under the Soviet system, the government monopolized the purchase of grain, the refinement

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<sup>208</sup> See Interview with author via e-mail (Feb. 26, 1998) (on file with author).

<sup>209</sup> In the post-independence era, the collectives were having difficulty obtaining the accouterments necessary for successful farming. See Anthony Robinson, *Survey: Kazakhstan: Down on the Farm?*, FIN. TIMES (London), July 11, 1996, at 2. This included not only high quality seed, insecticide, and fertilizers, but also tractors and spare parts. See Paul Stangel, *Agriculture Struggles to Rebuild*, FERTILIZER INT'L, Jan 1993, at 32.

<sup>210</sup> See U.S. DEPARTMENT OF AGRICULTURE REPORTS: *Kazakhstan Annual Grain and Feed Report 1997*, FT ASIA INTELLIGENCE WIRE, July 10, 1997 [hereinafter *Grain and Feed Report*].

into flour and bread, and the retail distribution.

The Ministry of Bread Manufacturing (the "Ministry") typically purchased all grain from collectives below world market prices.<sup>211</sup> With prices for fertilizer, power and other necessary inputs rising, the fixed, low prices paid by the government resulted in high debt loads for farmers.<sup>212</sup> Even after the government ended control of wheat prices, particular oblasts interfered with the development of a free market by refusing to allow grain to leave the region.<sup>213</sup> Although collectives could keep a small portion of the crop, they could not export what they retained.

Farmers also had to store grain in government controlled silos.<sup>214</sup> Production was vertically integrated, with the government operating the mills that produced the flour, the factories that made the bread, and the retail outlets that distributed the end use products.<sup>215</sup> With the price of grain kept low, the government effectively subsidized the cost of bread.

Following independence, the Ministry was dissolved and its powers were transferred to a new entity, Kazkhlebproduct.<sup>216</sup> In 1993, it was reorganized into a joint stock company, Astyk. The changes altered the form, but had little impact on the substance. The government, as the exclusive owner of Astyk, continued to control grain prices and exports, and to monopolize the manufacture of bread.<sup>217</sup>

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<sup>211</sup> For example, in 1992, when the government still monopolized grain purchases, collectives received \$42/ton for certain categories of wheat. The price in the world market was \$115/ton. *See id.*

<sup>212</sup> *See id.*

<sup>213</sup> *See* Department of Agriculture, *Grain: World Markets and Trade*, Federal Department and Agency Documents, Aug. 12, 1996 ("Oblast governments have been able to accomplish the latter [(continual interference with the free market to prevent the exportation of grain)] by using a number of administrative strategies still available to them in the local command economies, such as imposing a regional procurement, limiting the movement of grain, or restricting the delivery of inputs to producers who support antimarket policies . . .").

<sup>214</sup> In 1992, Kazkhlebproduct controlled 353 silos. *See* A. Kovalev & G. Nikitina, *The End of a Bread Monopoly*, RUSDATA DIALINE-BIZEKON NEWS, Apr. 8, 1992, available in LEXIS, News Group File. In general, silos were organized as centralized storage facilities in each oblast.

<sup>215</sup> The government had 112 grain production facilities. *See id.*

<sup>216</sup> *See* Kovalev & Nikitina, *supra* note 214.

<sup>217</sup> In 1995, approval of grain export contracts was transferred to the Kazakh International Agroindustrial Exchange. Contracts must be registered

Only in 1995 did the process of privatization of the bread industry begin. The holding company first had to be segmented, which meant dividing the assets into units that could be sold separately. This included grain silos, flourmills, bread factories and retail outlets. The smallest assets, such as the retail outlets, would typically be sold as assets through small-scale privatization.<sup>218</sup> The largest assets, such as the bread factories, would be organized as joint stock companies and sold through mass privatization at share auctions.

Sales of bread industry assets actually commenced in November 1996.<sup>219</sup> Stores were sold through small-scale privatization; silos and factories through mass privatization. The grain elevators, flour mills and retail outlets proved relatively popular items for sale at the auctions.<sup>220</sup> Factories, on the other hand, were not. That, in part, reflected the hesitancy in some regions to sell such important assets. Equally likely, however, such hesitancy represented rational investor behavior. Smaller, more nimble bakeries were springing up, making mammoth bread factories that supplied whole cities unnecessary and inefficient.<sup>221</sup>

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with the Exchange and are subject to minimum price provisions. See *Grain and Feed Report*, *supra* note 210.

<sup>218</sup> Retail outlets were traditionally sold in small-scale privatization. When the national holding company for gasoline distribution, Munai Onimderi, was segmented, gas stations were scheduled for small-scale privatization while gasoline terminals were slated for corporatization and mass privatization. See B. Kuzmenko, *Kazakhstan Degulates Energy Prices*, CIS ECON. & FOREIGN TRADE, Apr. 22, 1994, at 12. Similarly, the segmentation of Farmatsia, the pharmaceutical holding company, involved the creation of large numbers of retail outlets that were sold as part of small-scale privatization. Both drug stores and gas stations were still being privatized in late 1996. See *Privatisation Update*, *supra* note 183 (noting that in December 1996, 20 gas stations and 27 drug stores were sold).

<sup>219</sup> Even before large-scale sales of Astyk assets, the government monopoly had eroded. One official indicated that the holding company's share of bread manufacturing had fallen to 46% by November 1996. See *Kazakhstan Continues to Break Down Industrial Monopolies*, BBC SUMMARY OF WORLD BROADCASTS, Nov. 8, 1996.

<sup>220</sup> See Memorandum from the CARANA, Consortium on the Results of Small-Scale Privatization, to the Cabinet Ministry, Republic of Kazakhstan (Oct. 31, 1996) (on file with author) [hereinafter CARANA].

<sup>221</sup> The same thing happened, for example, in the fruit and vegetable business. Under the Soviet system, produce had been aggregated in large warehouses, then shipped to retail outlets. With a less regulated economy, farmers could bypass the warehouses and ship the goods directly to the retail

Privatization brought benefits. Contrary to expectations, privatization did not result in significantly higher prices for bread. Indeed, in privately owned retail outlets, prices on some products had fallen.<sup>222</sup> In addition, variety increased. The number of outlets carrying the product increased, particularly with the advent of small grocery stores and kiosks that sold bread. Store hours were typically longer, and stores were better stocked.<sup>223</sup>

The improvements did not, however, arise from more efficient use of state assets. In general, these proved poorly equipped for a market economy. Instead, the primary benefit came from an end to the state monopoly of the bread manufacturing process, allowing smaller, more market oriented competitors to enter and dominate the industry.<sup>224</sup>

Nor did the government do much to facilitate the process. In selling the assets, no attempt was made to organize or train prospective purchasers.<sup>225</sup> No funds were made available for the purchase of assets by, for example, employees. Changes in the bread industry, therefore, brought only modest improvement, far less than what could have occurred under a more thoughtful approach to privatization.

## 5. CONCLUSION

This Article has an ambitious, yet limited purpose. It examines the impact of one aspect of economic reform—privatization—on culture. Perhaps the context is hopelessly narrow. The privatization process alone may not provide much

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outlets (sometimes shipping to shops, but more often to bazaars). Moreover, by avoiding the warehouses, the produce sold at the retail outlets was fresher. In selling the assets of this industry, therefore, the government discovered that the produce warehouses were not particularly popular and therefore difficult to sell.

<sup>222</sup> See Robinson, *supra* note 209.

<sup>223</sup> See CARANA, *supra* note 220.

<sup>224</sup> Success, however, effectively required an end to the government monopoly at all levels. Private bakeries, for example, could produce better quality, consumer oriented products than those from government factories. Nonetheless, they needed to buy grain and, to the extent that the government continued to control silos and the distribution of grain, that could prove difficult. Thus, success of privatization in the bread industry required not only an end to the government monopoly at the manufacturing level but also on grain distribution. See Interview in Kazakhstan (May 1998) (on file with author).

<sup>225</sup> See CARANA, *supra* note 220.

room for conclusions on the interaction between these often antithetical forces. To do justice to the topic, a broader economic framework may have been necessary.

Moreover, the Article does not address critical aspects of the privatization process. It does not deal with land privatization. Nor does it discuss in any significant detail the impact of the process outside of the main cities, where most Kazakhs still live.

Nonetheless, privatization represented the centerpiece of the economic transformation process. For more than half a century, Kazakhstan had been integrated into the larger Soviet economy. Privatization and capitalism also held out the promise of economic revival and higher living standards. As part of the process, the decision was made to transfer property from government to private ownership. In general, however, the process was unsuccessful. Privatization was haphazard. Rules changed constantly. Government support vacillated, first deciding to privatize the most valuable segments of the economy, then deciding not to do so. By 1998, large segments of the economy remained firmly in government hands.

Little was done to consider the post-privatization environment. Entrepreneurial behavior remained undeveloped. Stories of onerous licensing requirements and bribery were endemic. Insufficient emphasis was placed on the development of an adequate source of capital. Owners needed funds to modernize, update, and overcome the excesses of the command economy, but often found them unavailable.

Criticism is easy to levy. Dislocation would have followed the implementation of any economic system. Nonetheless, it was probably unrealistic to expect a rapid and successful adoption of a capitalist economy. In part, Kazakhstan was unprepared, both practically and psychologically, to wholly abandon an economic system based upon government control and to completely embrace open markets. Moreover, the anomalies created by the demise of the command economy meant that market principles prevalent in more developed countries would not function in post-independent Kazakhstan.

This suggests that economic reform should have emphasized a regime better suited to the unique conditions in Kazakhstan. In part, this meant recognition of the lack of training in capitalist principles and familiarity with open markets. It meant recognition that Kazakhstan was not a developing nation, but a

misdeveloped nation. It also meant a recognition of unique cultural and historical aspects of the country's development.

Despite the horrors of the Stalin era, with forced collectivization of herds and mass starvation, attributes of nomadic culture had survived and even flourished during the Soviet era. Kazaks still had not developed a culture centering on the ownership of real property and the rapacious collection of personal possessions. Moreover, the Soviet era did little to change the strong family ties shared among Kazakhs and a fundamental hospitality that seemed universal. In the transforming economy, however, these attributes were placed under the considerable strain.

Nor did the privatization program make any effort to take advantage of traditional Kazakh strengths. Kazakh lifestyle had a number of attributes that, in a properly designed process of economic transformation, could solve some of the inevitable problems that would arise. Strong family ties, developed in the days when Kazakh families traveled together in *auls* over migratory routes, remained largely intact. So did the sense of mutual obligation and cooperation, a quality necessary for survival on the steppe. Privatization could, therefore, take into account these values and inclinations, perhaps by encouraging family units to pool resources.

Instead, privatization made little use of these values. To the extent that cultural considerations surfaced, it usually centered on chauvinistic efforts to force Kazakh on the non-Kazakh population. Moreover, as one Kazakh noted, "not one scholarly study is dedicated" to the subject of oral literature.<sup>226</sup> As capitalism descended, the attempts to mandate Kazakh were running into conflict with the desire to learn English, the language of international business.

A more effectively run privatization would not have eliminated the conflict between a new economic order and the surviving vestiges of nomadic culture. Even with a smoother and more rapid recovery, Kazakh had to adapt. Nonetheless, reducing the period of economic debilitation—something that could have occurred with a more effective privatization process—would have created an environment more susceptible to a revival of Kazakh culture, history and traditions.

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<sup>226</sup> Baigozhina, *supra* note 21, at 527.

This suggests that in devising a program of privatization, the need exists to consider the transformation in economical, cultural and psychological terms. In doing so, it is clear that one size does not fit all. Nor does the speed with which assets are shifted from the public sector to the private represent the only or even the best method of ascertaining the success of a privatization program.